THE LAW AND PRINCIPLES

OF

CO-OPERATION

BEING THE

CO-OPERATIVE SOCIETIES ACT

No. II of 1912, Bombay Act No. VII of 1925, Burma Act No. VI of 1927 and Madras Act No. VI of 1932

WITH INTRODUCTION, NOTES AND APPENDICES

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TO

MY COLLEAGUES

M. L. DARLING and C. F. STRICKLAND

PREFACE TO THE FOURTH EDITION.

SINCE the third edition of this book was published, the movement has come under the scrutiny of a number of Commissions and Committees, and it has fallen to my lot to examine the reports and to incorporate in this edition whatever seemed of permanent value within the scope of the work. I have tried to insert in their proper place the relevant passages from the Report of the Royal Commissions on Agriculture and Labour, the Reports of the Madras and Burma Committees and those of the Central and Provincial Banking Enquiry Committees. It has not been found necessary to omit anything of importance on the ground that it was wrong or obsolete. Almost everything written on Co-operation in the various reports referred to corroborates the views expressed in this book; similarly nothing in any High Court Judgment which has come under notice has led me to alter the relevant passage in this work.

All Registrars of Provinces have kindly assisted me in the preparation of this edition by sending copies of their latest rules and by referring me to judgments of the Courts; to one and all I wish to offer my most grateful thanks for their courtesy and kindness in aiding me to make this book as complete and up to date as possible. Without their willing help I should not have been able to make it as reliable as I trust it will be found.

The annual reports for the years following the issue of the third edition contain little of any outstanding novelty; good teaching of members and good audit of societies are recognised as the main duties of the staffs. Careful preparation before registration is everywhere insisted on, and those

who are busy in building up the movement take little heed of those critics who ask why progress is slow and whether it will have brought about the millennium within ten years.

As in the other editions, I have tried to place before the reader the practise and the views of authorities without intruding my own. The degree of common agreement is so great that it is not necessary to be controversial. But I have allowed one exception in discussing the, to me, amazing order prohibiting primary credit societies from freely using their reserves in their own business. How any body, except the financing bank, can gain from such an order is beyond the power of man to prove.

While incorporating so much new matter I have tried to keep the size of the book down by omitting unimportant portions; although I asked freely for suggestions for omissions, I received none, and I fear that the number of pages grows with age.

As before, the book bears no official authority whatever. The preparation of this edition has been a heavy task amidst other important duties and I can only trust that it may prove of use to all workers in the co-operative field in India and Burma.

I should like to take this opportunity to thank all who have contributed to gain for this book such success as it has achieved since it was first published.

LAHORE, H. CALVERT.

April 3rd, 1933.

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INTRODUCTION.

In their Report on Co-operation in India, Sir Edward Maclagan's Committee note that most of the faults found in societies are due to the lack of teaching of true co-operative principles and that the importance of proper teaching can scarcely be exaggerated. They dealt with some of these principles but made no attempt to write an authoritative manual on the subject. Their task was rather to examine the higher financial aspects of the movement than to prescribe the proper rules to be observed in the every-day business of a society. Prior to the drafting of the bill which grew into the Co-operative Credit Societies Act of 1904, the Government of India made a very lengthy and very thorough examination of the whole subject as it was then understood. The difficulties of rural finance had repeatedly called for and had secured the closest attention as each period of scarcity and distress succeeded another.[1] Various measures were resorted to until it becomes difficult to grasp the full sum of the enormous efforts made to cope with the problem. Famine Relief, Irrigation Works, Railways, acts for the relief of agriculturists, for advancing capital and for saving them from expropriation all testify to the solicitude of Government. It is not intended to enter into any discussion of India's most pressing economic problem or of any of the measures adopted to solve it save this one of co-operation. The Government of India in introducing the Act to the country published an unusually clear and illuminating resolution but they refrained from any lengthy exposition of the new law or of the principles and practices which had come under review in the framing of it. Their aim was "to lay down merely the general outlines and to leave the details to be filled in gradually, on lines which the experience of failure or success and the natural development of the institutions may indicate as best suited to each part of the country. So far, therefore, as it dealt with the constitution of the societies, the provisions of the Act were confined to those general principles which all Co-operative Credit Societies must accept as the condition of being permitted to enjoy the

[1] For a review of the whole discussion, the reader cannot do better than consult Ray's Agricultural Indebtedness.

advantages afforded by special legislation".[1] The object of this book is to fill in the details and to provide material for guidance when new questions come up for decision. It seeks to facilitate the teaching on which the Committee on Co-operation rightly laid so much stress by providing in a handy form, the results of the experience gained in many countries, and by gathering together in one volume a number of the conclusions to which many works in India now subscribe.

In the first place, it must be understood that the Act represents merely one stage in a lengthy progress. As the Royal Commission on Agriculture pointed out, various schemes for agricultural relief banks, for land improvement banks and for land improvement companies, which, in all cases, were to be regulated by the ordinary company law, were placed before the Famine Commission of 1880. None of them met with the approval of the Commission but the idea of an Agricultural Bank was revived in 1882 by Sir William Wedderburn. Under his proposals there was to be, first, a liquidation of existing debts with the assistance of Government and, then, the establishment of a bank to take over the claims of Government under the liquidation scheme and to make further advances to the people. The bank, after taking over Government claims, was to be entitled to recover its dues as land revenue on condition that, before recovery, the other methods available had been tried. Under this scheme the major portion of the funds was to come from Government; Government officials would, in fact if not in name, be officials of the bank and private enterprise would be almost confined to the management of the head office. For these and cognate reasons Sir William Wedderburn's scheme was not considered suitable,[2] but the essential elements were provided for in the Land Improvements (1883) and Agriculturists' Loans (1884) Acts. These enable the cultivator to obtain money at a low rate of interest for productive purposes approved by Government. Every loan has to be secured by sureties or by a charge upon the land. The revenue officials supervise the employment of the money;

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[1] Government of India Resolution.

[2] For details see Ray's Agricultural Indebtedness, p. 243, *et seq.* The scheme was held to be financially unsound: 'no amount of support or encouragement from Government can render banking operations successful, whether in India, or elsewhere, if they are begun on an unsound basis, and are not conducted on true commercial principles.' *Ibid.*, p. 253. An experiment on lines not very dissimilar is now being tried in Bhavnagar State.

accurate accounts are maintained and punctuality of repayment is insisted upon. The main points of difference between this *takkavi* system and an Agricultural Bank are that while in both Government provides the capital[1] and takes the risk of loss, in the former the granting of the loans and the account-keeping are in official hands, in the latter these functions would be performed by the Bank. In both the collection of principal and interest is entrusted to the subordinate revenue staff. From the point of view of the cultivator there is little difference between borrowing from Government and borrowing from an Agricultural Bank. In both cases, the borrower has no interest in the welfare of the lending body or in that of his fellow-borrowers; he has no participation in the profits and no control over the management.

Advocates of Agricultural Banks for small cultivators cannot find support in experience. The Egyptian Bank has definitely failed to achieve its object and is steadily dwindling. As the Royal Commission on Agriculture stated, from the point of view of providing small cultivators with loans carrying interest at moderate rates, it has definitely proved itself to be a failure. Its history provides a wholesome corrective to the views of those who hold that the problems of rural debt are to be solved at a stroke by the provision of cheap and abundant credit.[2] Agricultural Banks in other countries are, to a large extent, machinery for lending Government funds to educated farmers. Failures have been many but success is also claimed where there is no better machinery available. Dawson's Bank in Burma is a very interesting example of a Joint-Stock Mortgage Bank which is not co-operative. The special conditions which have enabled that bank to attain success probably exist nowhere else in India.

In 1892, Mr. (now Sir F.) Nicholson was placed on special duty by the Madras Government for the purpose of enquiring into the possibility of introducing a system of agricultural or other land banks. His report in two volumes (1895–97) was reviewed by the Madras Government in 1899 and came under the notice of the Government of India in 1900. About the same time Mr. H. Dupernex, I.C.S., after much study of the question began to experiment with village banks in the United Provinces

[1] In Sir W. Wedderburn's scheme Government was to advance 6½ lakhs of rupees to liquidate existing debts.

[2] Mr. C. F. Strickland's 'Studies in European Co-operation' contains an excellent account by an expert on the subject.

and published a little book, "Peoples' Banks for Northern India" in 1900. This came also under the notice of the Government of India, and as a result the question of introducing Co-operative Credit Societies into India was considered by a Committee which met in Calcutta in December 1900. This Committee was of opinion that societies on Raiffeisen lines might prove suitable. There next appeared the Report of the Famine Commission (May 1901), with its recommendations in favour of Mutual Credit Associations. It must be remembered that amongst the members of this Commission, presided over by Lord MacDonnell, was Sir F. A. Nicholson whose reports have been mentioned above. The Commission wrote (section IV): We attach the highest importance to the establishment of some organisation or method whereby cultivators may obtain, without paying usurious rates of interest, and without being given undue facilities for incurring debt, the advances necessary for carrying on their business. Agriculture, like other industries, is supported on credit.... ..... The Saukár or bania has, from being a help to agriculture, become, in some places, an incubus upon it. The usurious interest that he charges and the unfair advantage that he takes of the cultivators' necessities and ignorance have, over large areas, placed a burden of indebtedness on the cultivators which he cannot bear[1]..... It should be understood from the outset, and made perfectly clear to all concerned, that the establishment of a village bank does not imply the creation of an institution from which the villagers may draw money at their discretion..... It is not intended to frighten the village money-lender by permitting a village bank to enter into competition with him over the whole field of his business; still less is it the intention to encourage borrowing for unproductive purposes. No association, borrowing on the joint responsibility of its members, would be justified in devoting any of its funds to loans for unproductive purposes. It does not consequently

[1] *Cf.* Government of India despatch of 1884 (Ray, p. 242): 'There are indications that India suffers from want of loanable capital..... The agriculturist, when in need of money for the most prudent purposes has to pay so dearly for a loan that it absorbs the profit of his business.' This quotation possesses some historical interest. In 1884, deposits in all banks in India amounted to less than 17 crores, in 1908 they exceeded 163 crores. What India suffered from in 1884 was the lack of a sound system of rural credit. The principal Joint-Stock Banks, registered in India, had less than one crore deposits in 1885, and over 61 crores in 1922. Thereafter came a sharp drop to 44 crores in 1923, and the figure for 1929 is under 63 crores. In the ten years ending 1930, the deposits in Co-operative Banks have increased from 2 crores to 11, and those in Post Office Savings Banks from under 23 crores to over 37.

enter into the scope of a village bank's operations to lend for marriage festivities or for caste feasts or for similar objects. If people wish to borrow money for such purposes or for any other purpose unconnected with agriculture, they must still go to the village Saukár or bania. The Co-operative Agricultural Bank only aims at freeing the great business of the cultivator's life from the terrible burden, which now presses on it owing to the usurious interest taken for agricultural loans.

The Commission then proceeded to state the principles (Raiffeisen) on which they considered these credit associations should be started.

The whole question was then referred to a Committee which sat at Simla in June and July 1901, and drafted a bill and model rules. These were circulated for opinion and, after much discussion, the Co-operative Credit Societies Act of 1904 was passed. The new law was introduced and explained to the public in a very able resolution by Sir Denzil Ibbetson.[1] The Act was largely framed on the English Friendly Societies Act. It was put into practice throughout India and came in for a certain amount of criticism, especially at a succession of conferences of Registrars. As a result of the experience gained, a new Act, the present Co-operative Societies Act of 1912, was passed but the principles of simplicity and elasticity were retained. The present Act is thus the result of the careful and prolonged consideration of a large mass of material, Acts, rules, opinions, etc., and one object of this little book is to explain the Act in the light of this material and the wide experience now available. The Act everywhere followed precedents and nowhere introduced a novelty. In some cases, whole sections, in others clauses and in others special words have been adopted from other Acts. These Acts have been interpreted in various courts and the consequent rulings will come up for consideration before our courts in India and will guide them in their decisions. We are thus, to a

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[1] Rev. and Agr.—1-63-3, dated 29th April, 1904. *It is particularly* important to remember that the first Act was passed *before* there was Indian experience to guide the legislature. Japan affords a parallel. There 'the modern Co-operative Movement is a movement from above and not from below. The new Co-operative Law was not a legislative measure in response to an insistent demand from the people. It was a measure imposed on the people by a paternal Government, as part of an extensive policy of "enlightened autocracy." It was a movement encouraged and promoted by State help and by a vigorous campaign of propaganda.' [Ogata: The Co-operative Movement in Japan, p. 84.]

considerable extent, bound by rulings recorded before the discussion in India commenced. An attempt has been made to explain how these rulings affect the Act. The Act left many points for future decision, and it is hoped that the material collected will help in the solution of many questions that require to be answered. Hitherto both Act and rules have dealt with bare necessities, but there are many points, not touched on in them, upon which societies require advice and guidance, and it is hoped that some assistance will be forthcoming from the pages that follow.

The Act had to arrange for the fitting in of co-operative principles with the general company law of the land, and to the average busy man it is not always easy to distinguish the sections embodying co-operative principles from those binding all associations; moreover the English co-operators have included men who have fought long and earnestly for their rights and what they have won after decades of endeavour, the Indian legislature has conceded from the start. Exemption from Income-tax is not in England a privilege as suggested in this Act but a right won from the Treasury and acknowledged by Parliament.

In their introductory resolution the Government of India explained that "Legislation was required to take Co-operative Societies out of the operation of the general law on the subject[1] and to substitute provisions specially adapted to their constitution and objects. In the second place, it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations; and, thirdly, it was necessary to take such precautions as might be needed in order to prevent speculators and capitalists from availing themselves, under colourable pretexts, of privileges which were not intended for them."

For the provisions of company law, rendered inapplicable by section 48, the Act substitutes modifications in sections 3, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 23, 24, 25, 26, 35, 36, 37, 38, 39 and 42. These all follow closely sections of the Indian Companies Act, the Registrar taking the place of the Court. Privileges and facilities are conferred by sections 19, 21, 22, 23, 27, 28, 39, 40 and 41, while the precautions are embodied in sections 4, 5, 6, 13 and 14.

[1] See, for instance, section 4, Indian Companies Act. Before the House of Lords Committee on 'The Thrift and Credits Bill,' Mr. Wolff said there was no reason why Central Banks should not be placed under the Companies Act, but Mr. Wolff makes no claim to a knowledge of company law.

The only provisions in any way special to co-operation are the insistence on unlimited liability in section 4, and sections 14, 29, 30, 31, 33 and 34. The conservation of co-operative principles, referred to in section 4, is left to the rules and by-laws; the former are to be framed by the Local Government and the latter have to be approved by the Registrar before registration.

The first point of importance to be noted about the Act is that, like the English Acts, it is a modified code of company law and so necessitates the strictest adherence to rules and by-laws. The existing Companies Act follows very closely the English law and so inherits many judicial rulings upon the latter. It is the result of generations of trial and is thus not lightly to be criticised; and amendments should only be undertaken after a thorough study of the history of the sections which it is sought to alter. It must be remembered that in most European countries associations were prohibited by laws against combination and conspiracy.[1] In England these were repealed in 1824, but the first Friendly Societies Act was passed in 1793. The Rochdale Pioneers commenced operations in 1844, while in Germany Raiffeisen opened his first bank in 1847-48. The principle of voluntary association for lawful objects, once conceded, has contributed enormously to the material prosperity and moral elevation of the English working classes, while co-operative credit has proved the saviour of agriculture on the continent of Europe. The English and Scotch Co-operative Societies are mostly registered under the Industrial and Provident Societies Act of 1893, which is the result of much experimental legislation commencing from 1852. The credit societies (e.g., in Ireland) are mostly registered under the Friendly Societies Act, 1896 (amended in 1898), which is the last of a series dating from 1793.[2] Similarly the existing laws of France and Germany are based on the accumulated experience of some seventy years, that of Germany being founded very closely on the English Acts and rules.

The rigid provisions of these various laws at first sight may seem to contrast strangely with the simplicity and

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[1] *Cf.* Smith Gordon: Co-operation for Farmers, p. 29. 'It must not be forgotten in this connection that the right of free association which we are apt to regard as the inalienable heritage of the citizen, was only granted comparatively recently in most civilised countries.' Unfortunately this truth and all that it involves is little understood in India.

[2] Both Acts were devised mainly to meet the requirements of townspeople and not of agricultural communities. Great Britain has not yet got a Co-operative Societies Act.

elasticity of the Indian Act. They must be presumed to be based on knowledge of the people with whom the legislatures were dealing and their absence from the latter Act must not be construed as reflecting the opinion that they are not necessary here. The Government of India has thrown upon Local Governments and Registrars the responsibility for insisting on the necessary rigidity adapted to suit local conditions. It will not be seriously argued that a strictness which seventy or eighty years of experience has shown to be necessary in Europe can be lightly dispensed with in India, and it is a fundamental error to assume that the simplicity and elasticity which characterise the Indian Act give Local Governments and Registrars a free hand either in the determination or in the application of the principles of co-operation. Bombay and Burma have in their local Acts introduced more rigidity but have not strengthened the necessity for strict adherence to co-operative principles. The laws of co-operation in Europe represent many years' culture and growth, India has merely imported a selection of plants, it has not introduced a new genus.[1] There are those who would protest against too much strictness and too much rigidity.[2] These overlook the strictness and rigidity of the Agriculturists' Loan and Land Improvement Acts, of the Indian Companies Act and of the various Banks and Insurance Societies Acts, all dealing with transactions analogous to those of Co-operative Societies. Nothing could be more detrimental to the progress of co-operation than the idea that it is compatible with sloppiness. The problem to be grappled with is largely that of rural finance and sloppy finance is intolerable. Fortunately for India, Sir Edward Maclagan's Committee throughout their report, continuously

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[1] It is India's good fortune that it is not necessary for her to hammer out new systems, or to put to the test untried projects, visionary and otherwise. During the past fifty years, experienced men in Europe have been at work, testing new schemes, improving old methods, remedying defects and strengthening weak points. We can profit by their success and avoid the mistakes they fell into (Dupernex, pp. 111-112). The Observations of the American Commission (Part I, p. 9) are particularly apposite:—'we cannot borrow European Co-operative methods indiscriminately, nor should we refuse them indiscriminately.....it would be foolish to say that, no matter how successful co-operation has been in Europe, Americans are so different that it cannot be made to work here. The only wise method is to take what seems best from Europe, adapt it to our conditions and try it out.'

[2] There are even those who claim the right to make mistakes—with other people's money. England and India have had ample experience of the failure of banks professedly designed to attract deposits from the poor. Banks for the poor must be as rigidly careful in observing true principles as banks for the rich.

insisted on this important aspect of the movement and it is much to be regretted that, as some recent inquiries have shown, their excellent advice on the need for sound finance has been neglected. Success in co-operation can only be achieved by following the principles which have made co-operation successful. Membership is not compulsory, and those who do not like the principles should not join the societies. It is no part of the duty of co-operators to oppose the creation of non-co-operative credit societies, whether joint-stock banks or loan societies, but it is part of their duty to keep aloof from them and to refuse them the name co-operative. Bengal, for instance, has a number of joint-stock money-lending banks known as loan-offices, which lend to owners and cultivators, largely on personal security, but are not in any way co-operative. It is, perhaps, unnecessary to point out that defective Acts and rules inevitably afford opportunity for occurrences that lead to their own amendment. Alterations of the laws relating to Companies, Insurance Societies, etc., in India have been due to a series of deplorable incidents which revealed the defects in the previous laws. In the case of credit societies, the English law has generally been moderately strict but the desire to reduce to a minimum the legal restrictions on private business enterprise has resulted in the continuance of opportunities for frauds. The intention of the Government of India in adopting the principles of simplicity and elasticity seems not to have been that there should be no rules or even no complete body of rules but that all rules necessary should be framed by Local Governments. The co-operative movement has contained many failures, and each in turn preaches the lesson of strict adherence to good, sound rules.

It is of special interest in this connection to note how the very wide experience of different provinces is tending to a remarkable similarity of rules and by-laws. Other countries supply instances where politicians have sought popularity by securing a relaxation of one accepted rule or another, with the inevitable result of abuse and failure. American opinion seems to be strengthening in favour of the view that the surest method of bringing about true co-operation is by outlining in full in the law a method of organisation that embodies the true principles.

Before proceeding to the discussion of some of the more important aspects of co-operation, it seems necessary to remind critics that the Act of 1904 was deliberately limited to credit. Sir D. Ibbetson described its object as the

encouragement of individual thrift and of mutual co-operation among the members with a view to the utilisation of their combined credit, by the aid of their intimate knowledge of one another's needs and capacities, and of the pressure of local public opinion. When this Act was drafted there was not available the voluminous literature on all aspects of co-operation which has since been published, and the Government of India could do no more than prescribe general outlines and leave it to selected officials to study the movement in other countries and adapt to local conditions the essential principles of successful rural banking. In 1904 there was no popular demand for the sound control of credit, and the general population had not at that time acquired the knowledge of co-operation and developed the enthusiasm for rural betterment which is now so widespread. The Indian Central Banking Enquiry Committee (1931) were told (*cf.* para. 148 of their Report) that the general impression that co-operative credit alone was the object kept in view at the outset by the Imperial legislators is not correct and that the restrictive scope of the Act of 1904 was a "slip" which was sought to be remedied as quickly as possible. It is a pity that some member of this Committee did not study the history of the scheme as embodied in contemporary documents.

WHAT IS CO-OPERATION?

As there seems to be some confusion as to what is meant by Co-operation, some space may be devoted to an attempt to explain what the term is intended to express. Part, at least, of this confusion seems to be due to the fact that, in England, it was co-operative distribution that first proved successful; while, in other countries, it is agricultural co-operation, and more especially credit, that has assumed such importance. In the attempt to preserve unity of conception, the various definitions of co-operation have been kept so vague as to be almost completely uninforming. Sociologists have attempted descriptive definitions while legislators have tried to determine the minimum characteristics of a society which must be present if the society is to enjoy the privileges conferred by law. Holyoake, for instance, defined it as voluntary concert, with equitable participation and control among all concerned in any enterprise. Holyoake and his contemporaries had their attention fixed on the evils resulting from the early and rapid rise of capitalism. In those days, the onrush of the industrial revolution had necessitated the accumulation of the capital of many people in joint-stock enterprise. Liability was then still unlimited, and it was but natural that those who bore the risk should retain the control and take all the profits. The need for restrictive legislation was not sufficiently foreseen, and grave abuses arose that aroused bitter feelings in the hearts of the workers. To them it seemed that money was all-powerful, and the human element was at its mercy. The many preliminary efforts that finally led to the discovery of the real co-operative principles were all directed towards the amelioration of the lives of the workers under the heel of capitalism. Thus Holyoake's definition repeats the cry of men ground down in poverty, who thought their way of escape lay in securing fair dealing, fair opportunity, freedom to choose their own lives and emancipation from the capitalist and the middleman. Since the little store in Toad Lane was opened, however, the movement has progressed far, and a greater appreciation of all that co-operation can effect has led to a wider conception of its principles. The essential points will, perhaps, become clear if the different definitions

of various writers are set down. Mr. Fay,[1] from the social-economic standpoint, defines a co-operative society as an association for the purpose of joint trading, originating among the weak and conducted always in an unselfish spirit, on such terms that all who are prepared to assume the duties of membership may share in its rewards in proportion to the degree in which they make use of their association. Another writer[2] says a Co-operative Society is a union of persons, established according to principles of equality, the number of whose members is not limited, and the purpose of which is, by the joint performance of economic acts, to improve the financial position of its members or the conditions under which they carry on their profession, by means of either pure self-help, or of self-help with government support; provided that all profits made by joint action shall be distributed in proportion to the extent to which each member has taken part in the business, and not in proportion to the capital invested. The same idea is expressed more tersely by Mr. Herrick[3]: co-operation is the act of persons, voluntarily united, of utilising reciprocally their own forces, resources, or both, under their mutual management to their common profit or loss. Another writer says[4] that a Co-operative Society may be defined as a voluntary association of individuals, combined to achieve an improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth. The Austrian Act refers to associations with an unlimited number of members, the object of which is the promotion of the industry or trade of their members by means of common action or credit. By the Japanese Law of 1921, a Co-operative Society is an association having legal existence, formed by persons of modest means in order to promote and develop, according to the principles of mutuality, the exercise by the members of their occupations and the improvement of their economic condition. The British Columbia Agricultural Association Act (1911) provides that an association shall be deemed to be formed upon the co-operative system if provision is made by its constitution and by-laws for securing to all producers, who are members of the association, a share in the profits of the association in proportion to the value of the produce supplied by them, after payment of a dividend

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[1] Co-operation at Home and Abroad, p. 5.
[2] Co-operation in Finland, pp. 76-77.
[3] Rural Credits, p. 247.
[4] Rural Reconstruction in Ireland, p. 54.

upon the capital stock not exceeding six per cent. per annum. Provision shall also be made for enabling all producers in the district to become members of the association by limiting the number of shares to be held by any single member, or by other effective regulations. The Roumanian code proposes to define Co-operative Societies as associations with a variable amount of capital with no limit to the number of members, who may join or leave them at any date. Their object is to carry on joint work on a definite plan, with a view to furthering the economic and social interest of their members. The Swiss definition is: A Co-operative Society is one constituted by a varying number of persons organised corporately which aims principally at contributing towards the economic prosperity of its members by joint action. The formation of Co-operative Societies with capital fixed in advance is prohibited. The Indian Act suggests (section 4) that a Co-operative Society is a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles. But it leaves to the Registrar the decision as to what co-operative principles are.

From these definitions it should be possible to derive an accurate idea as to what co-operation is. Originally, as has already been explained, the movement owed its origin to poverty and to the desire for some way out of all the distress and hardships that poverty entailed. The common bond that held the members together, or that induced them to combine, was poverty or economic distress, first amongst factory workers, and later amongst farmers. As all lacked a sufficiency of capital, capital could not be the basis of association. The only other basis was the human individual, and accordingly the first principle of co-operation is that the members join as human persons and not as capitalists. The second principle follows from the first; for if persons meet to satisfy the common need, there should be no distinction between them in the satisfaction of this need. They must meet on a basis of equality.[1] The third principle

[1] Especially if liability is unlimited and therefore the same for all. But equality in India is not always simple to secure. A writer in the Madras Bulletin of Co-operation (April-May 1923) says:—A reliable authority informs me that in the case of a very large number of societies in Malabar, when a general meeting is convened, the caste members meet in some house, and the 'untouchable' members stand half a furlong off, and that, after the caste people have discussed the business, the decision is shouted out to the others who simply hear and obey. In the Punjab, the strict adherence to equality within the society is one of the absolutely necessary essentials to success in the consolidation of fragmented holdings.

is not peculiar to co-operation, but its importance in the life of a society is so very great that it deserves a special place. The act of association must be voluntary. The fourth principle is that the members join to promote the economic interests of themselves, and not of anybody else.

Above all else, however, it must be clearly remembered that co-operation is a form of organisation. Experience seems to show that it is the only system of voluntary organisation suitable for poor people. *Co-operation, then, is a form of organisation, wherein persons voluntarily associate together as human beings, on a basis of equality, for the promotion of the economic interests of themselves.* It is not primarily an ethical movement but a strictly business one and many failures in India would have been avoided if this had been more stressed. Thus stated, it becomes clear that only the miraculous success of the Rochdale Pioneers could afford excuse for their puny effort to find a solution for what is, perhaps, the most difficult problem in the world. Only acute misery could have steeled those few weavers to brave the open contempt and derision of their neighbours and relations. Only the gloomiest of alternatives induced the German cultivators to listen to Raiffeisen. One of the most important lessons that the American Commission learned in Europe was that it was only when the European farmers were hard pressed, when the governments saw that they were going to lose their farmers because they could not make a living, and when the farmers saw that they must do something to preserve themselves, that they took up the matter earnestly. A great reform was accomplished, but it never would have been accomplished but for the spur of necessity.[1] As the movement has progressed, however, it has gradually been realised that poverty is not a necessary circumstance in the success of the application of co-operative principles. Poverty is a spur, and for the moderately poor there seems to be no other alternative method of bettering their condition than this one of co-operation; but the poor are not the only people who can derive benefit; indeed, good co-operators deplore the fact that the poorest people remain outside the movement.[2] The one circumstance

[1] Observations of the American Commission, Part I.

[2] Experience has shown that the very poorest do not join Co-operative Societies, in particular such as do not have a permanent place of residence or a fixed income. Co-operation has achieved its greatest success amongst the moderately poor. Professor Alfred Marshall (Industry and Trade: Bk. II, Ch. VII) points out that selling for cash left the improvident customer to the old-fashioned shopkeepers. A writer in 'Better Business'

without which there can be no successful co-operation is the common need of some economic advantage. If any permanent good is to result, this need must be fully realised by all concerned.[1] The mere existence of a common need affords a field for co-operative effort, but little will be achieved without the growth and development of a real co-operative spirit. As the American Commission put it: the key to the success of the co-operative method of doing farm business is to develop the co-operative spirit; that is, the willingness and desire to sink individual opinions and interests to such an extent that a group of men can work together for common interests. When this spirit is developed to a high degree it means a sort of loyalty and patriotism that leads men even to sacrifices, if necessary. Clearly there is in Europe such a thing as the co-operative spirit, co-operation cannot long exist without it.[2]

Given in any area a common need, a realisation of this need and a willingness to seek for it by joint action, the only method of setting to work that holds out any promise of success, is that known as co-operation. Co-operation is an organisation or method of doing business. It is not really anything more than a form, a skeleton framework on to which those in need can build to their desire. But there are many to whom it means much more than this, for it so happens that the essentials to success are largely elements of character of high value. The fact that human beings meet together on equal terms to combine for the satisfaction of a common need affords opportunity for the development of an unselfish spirit which leads to higher things than material advantage, so that, to many, co-operation is a faith. This does not mean that it is essentially

points out that the agricultural labourer has been too poor to organise co-operative stores. In India, too, it seems to be realised that there are a considerable number of people who appear to be too hopelessly sunk in poverty and debt to be saved by co-operation alone.

[1] *Cf.* .Vogt, p. 235. Co-operation appears and continues where the farmers have a marked consciousness of a common interest in the accomplishment of one definite purpose.... Before organisation can become a larger factor in the general farming areas, the people must become conscious of the advantage of such organisation.

[2] American Commission. Observations, Part I, p. 9. *Cf.* Levy: Large and Small Holdings, p. 198. 'If the co-operative system is to flourish, it presupposes a co-operative spirit; that is to say a certain brotherliness, possibly even some sentimentality, of disposition. In little village communities, with old-established and traditionally respected members, families which have held together, in spite no doubt of many family quarrels, for hundreds of years, the ground is prepared for co-operative action.'

anything more than a serious business undertaking, but it possesses the peculiar feature that it brings solid gains to those who are unselfish enough to work for the good of all, themselves included [1] By its means the finer elements in human character can be mobilised to secure economic benefits and so these elements are encouraged and developed Far from getting the better of his fellow members the object of each is to help the others in the firm belief that as they will in turn help him his need will the more certainly be satisfied It is a mistake to lay too strong stress on the moral aspect of the movement in its early stages, this will inevitably develop later as success in the economic sphere is attained [2]

The insistence on equality within the society seems to have originally been due to resentment against the inequalities of rich and poor but it is only logical that as it is a common need that forms the union this need should determine the status of each member within the society Whatever their position outside they are all lacking some thing they desire and if there be any difference admissible, it is in the intensity of their want of the common object This difference may render desirable an allotment of voting power on the basis of the use which the members make of their society but it is otherwise an invariable rule that each member should have one vote and no more In no case could there be a difference based on capital contributed

The essence of co operation is that each shall work for all and all shall work for each in the attainment of their common need it is thus not unnatural that each in doing his share of this bargain should desire some assurance that all will equally do theirs to meet this the members must agree to bind themselves by a formal contract Co operation is a business organisation and business principles demand that there should be a business like contract drawn up and subscribed to by all who are going to participate The association must be put on to a formal basis, and as the success of the enterprise depends on the loyalty with which each one of the members works for the achievement of the object and for stern adherence to the contract there must be

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[1] And not excluded as in charitable effort

The Committee on Co operation laid considerable stress on the moral element The object of co operation is the satisfaction of some common need which all desire Experience shows that this cannot be accomplished successfully without a strong moral backing so that people learn that good morals help to secure material progress

freedom to choose with whom they will associate, and freedom to correct the choice or to withdraw. Each member must be able to express his opinion on the advisability of admitting others, so that admission depends on popular election: he must be able to give effect to any alteration of opinion as to the fitness of another to perform his share, so that expulsion by popular vote must be provided for: he must be given the opportunity of withdrawing, if he finds that he himself can no longer loyally work with others. Under no other circumstances could the motto "Each for all, and all for each" be worked up to.

This insistence on the voluntary principle appears to conflict with certain practical examples. In one part of, Burma, it was a rule that anyone who desired to join a credit society, should also join the cattle insurance society in the same village. This, however, was more prudence than compulsion, as, if a man borrowed to buy cattle, his fellows reasonably insisted on his taking an obvious precaution against sudden loss. The insurance made the loan more certain of recovery and so there was nothing uncooperative in the rule. In certain provinces of Belgium, Mr. Strickland found compulsory cattle insurance imposed by the provincial governments. Some other instances are worth noting as they show, not so much disregard of an important co-operative principle, as appreciation of the importance of poor people co-operating. In Tunis, all native agriculturists are obliged to belong to the thrift societies.[1] In what is now Bulgaria, the law compelled the farmers to join banks established for them in the principal cities of each district.[2] In French West Africa, the Governor-General has power, in the districts where this measure is deemed desirable, to compel farmers or breeders to join societies. In that case, the contributions of the members are collected in the same way as the taxes. In South Africa (1924) a clause has been inserted providing that, if 75 per cent. of the producers of any kind of agricultural produce who also produce 75 per cent. of such products in a given district, area or province and are members of a recognised Co-operative Society, agree to the collective sale of their

[1] International Review, February 1917, p. 25.

[2] Herrick, p. 429. *Cf.* Modern Japan by W. M. McGovern, pp. 235-36. Under government auspices, farmers' guilds were established, which brought about mutual aid, the development of scientific agriculture..... and common purchase and credit. Eventually membership in these guilds was made compulsory on all farmers.

said products, each grower of such product in such area will in future be legally bound to sell it only through the said collective selling agency, quite irrespective of the fact whether or not he belongs to the said Co operative Society Russia tried compulsion from 1919 to 1923, but appears now to have changed this policy There is a tendency towards compulsion to join cattle insurance societies in America, and hail insurance is apt to become a function of the local governing body in consequence of the small sums to be collected and the widespread nature of the undertaking It would, perhaps, be better to regard these as socialistic rather than as co operative enterprises There is much the same excuse for fostering compulsory co operation in backward tracts as there is for introducing compulsory education The end becomes so desirable that the means appears to become less important Compulsory co operation, wisely conducted is compulsory adult education in business methods Compulsory thrift is generally admitted to be beneficial The result, however, can never be the same as voluntary co operation Voluntary membership not only strengthens individual responsibility, but it differentiates co operation from State schemes of social reform [1]

It has been explained above that it is a realisation of a common need that brings people into the association, they enter to get something for themselves, and it is the object of the society to secure this for them The society exists for the members, and not for anybody else Special significance, therefore, attaches to the words " of their members " which are found in most Acts dealing with Co-operative Societies In some provinces, the management is apt to fall into the hands of honorary workers who act more from feelings of charity towards their neighbours than from any desire to train them to dispense with their guidance and help If a business is such that it cannot be limited to its members, it cannot be truly co operative [2] Thus, it would be almost impossible for a railway or large canal to be purely co operative It must be clearly understood that those who associate together, do so for the advantage of themselves, and not for that of others, to reconcile this with the principle of unselfishness, there has come to be recognised another principle Co operation is open to all, there can be no arbitrary

[1] *Cf* Rural Reconstruction in Ireland, p 54
[2] *Cf* Co operation in Finland, p 12

limit to the number of members. This is an obvious corollary from the fact that the common bond is the common need, the object is the common good, therefore those who join, must do so in no selfish spirit; they must be prepared to admit all who have the same need, and who are ready to subscribe to the common contract.[1]

As the members join to secure something they all need, the advantage to be gained is the satisfaction of this need; if the need of one is greater than that of another, he will derive the greater advantage. That other must not seek to balance the account by seeking some gain that is not in the contract. More especially is it necessary that he does not seek to gain advantage at the expense of his fellow with the greater need. The chief danger, and almost the universal one, to be avoided is that he, with more capital, should gain from the need of him with less. Co-operation recognises that capital is entitled to a fair interest; but it refuses to admit any other right attaching to its possession or claimed by its owner, and more especially the claim to a controlling voice in the enterprise. If from the activities of the association there results any divisible surplus, this must be divided amongst those from whom it has been derived in proportion to their contribution to it. As a matter of ordinary business caution, it is usual to allow for contingencies that may not happen: goods are sold for more than the actual cost price; interest may be charged at a higher rate than is necessary to cover expenses; the producer may be given less than his crop has brought: in all these cases, the resulting surplus is not regarded as ordinary business profit but as an overcharge which belongs to those from whom it has been derived and to whom it should be returned.

People, nowadays, have grown so accustomed to the capitalistic form of organisation that they experience difficulty in freeing themselves from some of the ideas associated with that form when dealing with co-operation, which is not a modification of capitalism but an alternative to it. Questions of profits, control, voting power, transfer of interest, rights of members and dealings with non-members, etc., are dealt with from a point of view quite different from

[1] The great force which drew the faithful to come past many brilliant shops to a humble store, was the faith that competition should give away to co-operation..... It meant that the movement was one by the weak to help the weak, that a newcomer was to be welcomed, because he wanted help; and not, according to the joint-stock company rule, in proportion to the capital which he contributed: Marshall, Industry and Trade, Bk. II, Ch. VII.

that under the capitalist system. Thus co-operation is the form of organisation most suitable for small people and small enterprises. In agriculture, it appears to be the only form that is of practical value, for most cultivators are men of limited means, and from the nature of their calling, are unable to combine their efforts in the factory system. They cannot collect their raw materials and their capital inside a mill, they cannot adopt the established methods of mass production, they cannot carry specialisation so far as the manufacturer and they cannot reduce costs by the methods familiar to him. At the same time, it is recognised that organisation is the key to success and to be successful agriculture must be organised. Accordingly it is found that, in practically every civilised country, governments are endeavouring to promote co-operation. Agriculture is still not only the most essential but the most important and the biggest single industry in every country except England, where it has only recently lost its premier place. The war drew attention to its position as the paramount factor in the life of any people, and it is not exaggerating to say that co-operation is now recognised as necessary if any country is to get the best out of its land. It is regarded as the panacea for most rural ills, and throughout the civilised world it is being strenuously advocated at the expense of the State.

Co-operation differs from its rival, capitalism, in that it promotes peace and not strife, unselfishness and not self-seeking. Both are forms of economic organisation; but with the great body of European co-operators, especially among the leaders, co-operation means something more than a device for enabling a farmer to save or to make more money. Many of its most ardent apostles look upon it as a sort of social reform, indeed, in some cases, as a religion. They consider it not only as an economic, but also as a moral, movement. And there is little doubt that many helpers are attracted by the evidence they see on every hand of social improvement wherever co-operation has obtained a firm foothold. It seems impossible to study the progress of the movement in any country in the world without being impressed by the great moral gain accompanying the spread of these societies for self-help through mutual help. But the American Commission spoke wisely when they said that co-operation should be entered upon at the outset, because it promises to be a more profitable way of doing business than the old way of every man for himself. Co-operation is more than this, but to be successful it must be built on a

business, and not on a sentimental, basis. The sentiment will come later and will help to maintain the co-operative scheme.[1] But sentiment will ruin co-operation if allowed to dominate the business aspect.

It may be advisable to sum up here the result of the above discussion. Co-operation is an alternative form of organisation to capitalism; it is specially suitable to people who have no capital sufficient for the full satisfaction of their needs on a joint-stock basis; it is essential to the best progress of agriculture, so much so that it is practically impossible for a country of small holdings to achieve prosperity without it. The mere fact that the Indian countryside is studded with money-lenders anxious to afford credit to the cultivators for all purposes, productive or unproductive, blinds many to the absence in the same area of sound banking facilities. The needs of the small cultivator of from three to eight acres cannot be met by the Joint-Stock Banks directly and the only sound method of providing sound credit facilities is the co-operative.

The absolutely necessary principles are that people should agree to associate voluntarily on terms of equality in order to secure the satisfaction of some common need. Human beings, and not capitalists, bind themselves together to "work each for all, and all for each." From these premises there follow a series of subsidiary principles in a perfectly logical manner, but to the ordinary mind, biassed by daily experience of capitalism, it is sometimes difficult to follow this logical sequence. In consequence, there is apt to be doubt as to the amount of support that should be accorded to the propagation of the movement. Briefly, an agricultural state cannot progress without it, and it is for the government to decide whether they desire prosperity or not. If there be any who dispute the above assertions, they may well be asked, in view of the voluminous evidence in support, to produce some alternative method of making a country of small holders prosperous.

Furthermore, it is the experience of every country that has any experience to record, that co-operation stands out for moral uplift, for honesty and for the homely virtues that count for so much in the daily lives of the people. It possesses the peculiar faculty of making virtue pay. All human beings are continually striving after the satisfaction of some materal need. Co-operation holds out the prospect

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[1] American Commission. Observations, Part I, p. 22.

of success in this effort, provided the persons concerned possess certain moral qualifications. Without these, failure is inevitable. Through co-operation morality is taken out of the copy book maxim and placed in the forefront of human action as absolutely essential to success in the most ordinary affairs of life. Moreover, the morals of an individual cease to be a purely private matter for his own conscience, they become of importance to the whole community to which he belongs.

CO-OPERATION AND ITS ALTERNATIVES.

THERE are many people who hold the opinion that co-operation is not only a snare and a delusion to the poor, but that it actually perpetuates the dominant position of capital by turning the poor into small capitalists. There was a time when socialists struggled to hinder the spread of the movement, and it is only very recently that Trades Unions have come to terms with it. The main line of cleavage follows the position allotted to capital. Co-operation differs from Socialism in being essentially individualistic. It stands out for the freedom of the individual, who is encouraged not to abolish private property and capital. but to acquire some for himself, to improve his economic position by working under his own control, and to take the management of his own affairs into his own hands. It is true that in different countries different methods are adopted to induce individuals to join Co-operative Societies ; in some French colonies. there is something that can hardly escape being called compulsion ; in Japan, there is a tendency to confine State aid to Co-operative Societies that has much the same effect ; but this pressure is designed to impel individuals to undertake the task of working for their own uplift. instead of leaving too much to a kind Providence or a far-seeing government. Self-help is the watchword. Even a State-stimulated Co-operative Society strongly resists any suggestion of interference from government in the management of its internal affairs. It seeks to become self-sufficing and independent, even though it be prepared to accept government aid when all other sources fail. Essentially it is based upon voluntary association and voluntary aid, and so differs from both Socialism and Communism. Inasmuch as co-operation tends to bring contentment and relieve economic distress, it clears away the material on which Socialists rely to create that resentment against the present system which is deemed necessary to induce people to accept their ideas. Co-operation seeks to make the best of the existing economic system by removing the more glaring evils of capitalism. As Prof. Gide points out, unlike socialism it takes its stand on, and works within, the existing economic framework :

it is already carrying into practice some of the most important de iderata of socialism and it is bringing about an immediate and very real amelioration in the conditions of those who practise it Co operative associations aim not at doing away with capital but at depriving it of its preponderant role of management in production as also of the tribute it levies in the form of profit The suppression of profit in all its forms was the essential point in Owen s system By making capital instead of the profit taker a mere wage (interest) earner the co operative system is neither more nor less than a social revolution [1] It is in no sense an enemy of private capital Where it is not possible to obtain complete control of capital co operators agree to a system of profit-sharing whereby after capital has received a fair interest the remaining profits are divided amongst the capitalist and he workers on a basis previously agreed upon. In some cases the workers are admitted to a share of the control. and what is known as co partnership results If in such a case the workers could secure complete control of capital and management there is co operative production Thus co partnership is regarded as a half way house towards co operative production. and so excites no enmity amongst co operators With Trades Unionists however the position is different they are apt to look askance at all profit-sharing schemes on the grounds that these 1) make workers into capitalists (2) discourage them from joining unions by making them contented with their lot and (3) induce workers o work harder improve their efficiency and gain more profits [2]

Prof. Alfred Marshall[3] quotes an extreme instance of his suspicion of co partnership in which in response to the question Is there any objection to profit sharing and collective partnership with the men not collectively as a union but individually? It was replied Yes for every man so singled out is spiritually transferred from the side of labour to the side of capital His concern is no longer to abolish the wage system for himself his fellows and the nation at large but to obtain all the profit he can extract from it

Thus co partnership is a system whereby all those engaged share in the profit capital control and responsibility according to an agreement arrived at beforehand

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G de Polit cal Economy pp 490-494
Cf Better Business May 1918 I 200
Industry and Trade pp 800 8 6

This means peace and not strife. Trades Unionism adopts an attitude of antagonism towards capital that prevents it from coming to any terms of a lasting nature with it. As Holyoake expressed it, it accepts the mastership of employers and the permanent dependence of workmen, while co-operation seeks to supersede employers as a separate class and to establish the independence of labour.

The distinctive features of co-operative work are that (1) the members of the co-operative group are associated by their own free choice; they determine for themselves of how many persons and of what persons that group shall consist; (2) those associated select from amongst themselves their own leaders, whom they can also remove; and (3) they arrange the division of the collective wages between the members of the group in such manner as may be mutually agreed upon between them as being equitable.[1] These three features are found in Trades Unions, but while co-operative workers divide all the collective receipts, the modern Trades Unionist insists on a full trade union wage and may leave any surplus to the foreman contractor.[2] Trades Unions base their claims on a wages system, co-operators would have no wages, but would divide all receipts (labour-income and profits) amongst the workers. To put it briefly, so long as there are employers and employed, the latter must receive a certain remuneration fixed beforehand, known as wages; where the workers are their own employers, the remuneration consists of an uncertain sum which can only be determined when the result of the enterprise is known.

Co-operation is, above everything else, a principle of peace, and it has for long been out of sympathy with trades unionism inasmuch as it does not regard the latter as essential to its own scheme. It is a business organisation, working on business lines and keeping accounts which prevent its followers from asking for too much. It has thus been possible for a Trades Union of employees of Co-operative Societies to come into conflict with its co-operative employers. And the latter have found considerable difficulty in deciding upon the policy they should adopt towards their wage earners.

In actual practice, there is very little conflict between the adherents of the two policies. Workers who would

[1] Schloss: *Methods of Industrial Remuneration*, p. 155.
[2] *Ibid.*, p. 236.

not think of joining in a society for co-operative production, freely join co-operative stores; and a very large proportion of members of Trades Unions in England are actually members of these stores. An agreement for mutual support has been arrived at in Great Britain which is causing some anxiety to co-operators of the old school. It involves the formation of a Labour and Co-operative Political Alliance whose objects are: to correlate and co-ordinate the forces and activities of the Labour and Co-operative movements in respect to representation in Parliament and on all local and administrative bodies, and to sustain and support one another in their respective and combined efforts to set up the new social order, and with the ultimate object of the establishment of a Co-operative commonwealth. The alliance would consist of the organisations affiliated to the Labour Party, the Trades Union Congress and the Co-operative Party.[1] Such an agreement, it would seem, could hardly last without entailing the abandonment of some of the ideals of co-operators. Co-operation is not a political movement; it does not seek to gain its ends by political means. It works by persuasion, by placing within the reach of non-members advantages which they cannot enjoy except by becoming members. Trades Unionism works by compulsion, almost it has been said, for compulsory State-enforced co-operation. Co-operation stands for self-help, for private enterprise and for the greatest extension of private property. It stands or falls on its merits, unaided by compulsion or State coercion; each member is free to leave the movement on the day he no longer desires to co-operate. Trades Unionism is tending towards collectivism or nationalisation of public interests. Co-operation is a spontaneous association on the basis of common interests. It is a business and not a political organisation and it stands or falls on its business efficiency. The limits to its expansion are fixed by its own success in competition with its rivals. Co-operation can only persist where its members gain something more than they could gain without it.

In the above discussion, the comparison has been almost confined to the industrial sphere, because it is in that sphere that there has been any clash of principles. In agriculture, it would seem to be without a serious rival where holdings are too small to permit of capitalist management.

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[1] *Times'* Report. Socialists, also, have now withdrawn their opposition and advise their adherents to join Co-operative Societies (Gide).

THE OBJECTS OF A CO-OPERATIVE SOCIETY.

THE principles of Co-operation, it has been shown, are very simple. When, however, attention is turned to the applications of these principles to practical problems, whatever intricacies and technicalities are involved in these problems fall to the co-operator to be solved. Co-operation, it is claimed, is the only form of organisation from which the poor can derive lasting advantage; therefore unless it can be of use in arriving at a solution of the troubles from which the poor suffer, it is after all but a sorry remedy for their distress. Similarly, it is claimed that co-operation is the only form of organisation open to agriculturists, and is essential if the cultivators are to get the best out of their holdings; unless, then, it can be of use in solving the ills of rural life, it can hardly lay claim to the loyalty of the farmers. It is one or other of the economic interests of the members that must form the object of a society; these economic interests vary widely; they include all the legitimate activities of the agricultural class; if the Registrar were merely a registering officer, as in England, he would have little to do beyond seeing that the by-laws were in accordance with the law and that the law was not infringed. In fact, in India, he, whether a Government official or an honorary worker, has been made the foundation of the movement; so that to him falls the duty of studying all possible objects, and of deciding which to encourage and which to postpone to a more favourable occasion. The main duty of the Registrar and his staff is to study the economic interests of the class from which members are drawn and to devise measures, on co-operative lines, whereby these interests can be promoted. He is becoming more and more the head of a great educative movement wherein the people are taught how to get rid of their troubles and improve their lives by their own united efforts.

The fact that the objects of a society must be the promotion, in one way or another, of the economic interests of the people who are prepared to co-operate, involves the close study of economics. In so far as the movement

is concerned with the rural classes, the co operative department becomes one of applied practical rural economics, and all concerned must become masters of this very intricate art To express it in more popular language, co operation is a means whereby the prosperity of the mass of the people can be improved Before, however, the general prosperity can be raised, causes of the present low standard must be discovered and for every cause there must be found a remedy

There are two, and only two ways, by which the wealth of a people can be increased Some persons talk as if they knew of other methods, and would disclose these if voters would trust them, but the only ways, known to man, are to increase production and to decrease consumption If wealth is to increase, production must exceed consumption Thus the material position of a people can be increased by one or more of the following methods —

(*a*) teaching the producers to produce more from their present industry, by scientific methods, improved implements, better seed, new crops, etc ,

(*b*) teaching the producers to produce wealth in the hours during which they are at present idle e g , sericulture, or cottage industries for cultivators in the slack season ,

(*c*) increasing the number of producers by reducing the number of those who at present add nothing to the wealth of the country, e g , reduce the number of unnecessary middle men, distributors, etc ,

(*d*) decreasing general sources of waste, such as needlessly high prices of commodities excessive cattle mortality, preventible sickness and inefficiency of the workers, low standard of labour, excessive costs of marketing etc ,

(*e*) decreasing special sources of waste, such as litigation, scattered fields, damage by insects, etc ,

(*f*) substituting a productive for a wasteful use of the factors of wealth, e g , turning into productive channels the trained intelligence now devoted to the law, or the money now hidden away in hoards

This does not claim to be an exhaustive list of the methods of increasing the wealth of a country,[1] but it will suffice to indicate the lines along which the objects of Co-operative Societies may be classified. It would be an easy task to re-arrange them under the heads of land, labour, capital and enterprise: but these are factors in the production of wealth, and, in India, waste, or non-production, is almost as big a source of poverty as the low standard of production.

Of all the possible objects open to a society, it is necessary to decide which shall be included in the by-laws; for a society is bound by its objects, it cannot legally incur any obligation not directly connected with the furtherance of these objects. "A society cannot have any other object than those specified in the by-laws, nor can its specific purposes be other than those in the Act, and the funds cannot be applied to other purposes than those expressed in the rules."[2] It is therefore of importance that the objects for which a society is being formed should be clearly, definitely and exhaustively set forth in the by-laws, that have to be approved before registration can be effected. Any act which is beyond the objects thus specified is *ultra vires* and void, and, if performed by the Committee or any office-bearer, is not binding on the members. If thereby any loss is incurred, the official responsible is personally liable.

The importance of this rests in the common experience that, when a Co-operative Society has been started, it is often desired to use the organisation for purposes not contemplated when it was registered. The members are then faced with the alternative of altering their by-laws or starting a new society to meet the new need. To avoid the former, it is customary, in some countries, to enter in the by-laws a number of objects, even though, at the commencement, it is not intended to embark on more than one. This has led to a long controversy concerning combination of objects, about which something must be said. In England, societies registered under the Friendly Societies Act are not corporate bodies and have not got limited liability: they can deal in credit, but not in supply. It is held, with good

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[1] This must not be confused with the wealth of the individual. A farmer wants not more produce but more profits, and he may get higher profits by decreasing the costs of production, obtaining a higher price for his grain, etc., without increasing the gross yield. Co-operation may thus confer great benefit upon farmers without any increase in production.

[2] Fuller: The Law Relating to Friendly Societies, 3rd Edn., p. 38.

reason, that a society, which uses the money of other people, should not be allowed to impose a limit to the liability of its members that would be likely to involve the depositors in loss. Further, there is a deep-rooted objection to allowing a banking business and a trading business in the same place; the Chief Registrar has always opposed it, and an attempt to legalise it by the Thrift and Credit Bill proved abortive. The discussion is somewhat involved with the question of State aid; generally it seems that the combination of credit with the provision of actual farm requirements is free from objection, but it is not considered permissible for State-aided propaganda to be directed to the formation of societies for the supply of ordinary household requirements. Apart from this, it is considered that the combination of credit and trading in the same society would lead to the Committee as traders borrowing from themselves as bankers. Moreover the important principle of selling only for cash and never for credit would be difficult to maintain when the member could borrow from one branch and pay into the other. The credit branch may press supply in order to induce members to borrow more, while the supply side may ask for easier terms of credit in order that members may purchase more. Theoretically it seems to be agreed that, in small societies, it is better that supply and credit should be combined when there is not on either side enough work to justify a separate organisation. In Ireland, Sir Horace Plunkett pleaded for power to combine both objects in one organisation on the ground that the credit work alone did not yield enough profit to pay for necessary establishment. But the Agricultural Organisation Society (Ireland), in their Report for 1923, wrote: "Experience seems to be showing that the best form of co-operative organisation is organisation per commodity rather than area organisation dealing with all commodities. Organisation seems to work most smoothly where there are societies covering a county, or a considerable part of a county, for each distinctive branch of work, such as purchase of requirements and sale of grain, dairying, cattle auction marts, wool, eggs and poultry, and fruit and vegetable auctions." The Chief Registrar of Friendly Societies (England), in his Report for the years 1918-20, wrote: "An interesting feature of farmers' societies (in the U. K.) is the extent to which they are developing the sales of groceries, draperies and other produce, as an addition to agricultural requisites. This feature of co-operation is most evident in Welsh societies. Some such societies deal with the Co-operative Wholesale

Society, and there is little to distinguish them from ordinary distributive stores." The British Ministry of Agriculture in its leaflets on the Agricultural Credits Act (1923) recommends founding a Credit society side by side with a Supply society and making book debits where needed. Outside England, the general rule is to permit the supply of farm requisites. It is more rare to find a combination of credit and the general store. Herrick says that the general belief is that at the beginning, when the credit associations are weak and few in number, they should combine the purchasing of supplies and the distribution of products with the banking business, and that after co-operation has become firmly established in a locality, the credit associations should leave trading and industrial pursuits to other co-operative associations specially organised therefor, but so grouped around and identified with it that it may attend to their financial transactions.[1] Besides granting credit to members and receiving deposits, the Raiffeisen societies may undertake the purchase in common of farm supplies, machinery and breeding animals to be used in common, the sale in common of farm produce, and the purchase of tracts of land to be re-sold to members. The purchases do not include groceries or household necessities.[2] In Austria, credit societies buy machines for sale or rent, keep breeding cattle, or undertake to sell supplies of members or maintain warehouses for the storage thereof.[3] In Belgium, collective purchasing is a common practice with the local credit societies.[4] In Spain many of the credit societies, besides doing a loan and savings business, supply their members on credit with seed, fertilisers and other requirements for agricultural work and the raising of live

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[1] Rural Credits, p. 262.

[2] *Ibid.*, p. 289.

[3] *Ibid.*, p. 376.

[4] *Ibid.*, p. 386. Mr. Strickland, however, writes: I think Belgian credit societies seldom do purchase; the purchasing body is either a separate Co-operative Society, or it is a section of the Boerengild (Farmers' Union) which is a professional association and not a co-operative society.

Mr. Darling in Chapter I of his report says: For business purposes separate societies are doubtless an advantage, but in small villages they are difficult to organise, and certainly more expensive to run. Opinion is in fact agreed that, in the small village, it is impossible to keep banking and trading apart. In Bavaria and in the province of Saxony, this principle is carried so far that few separate supply societies exist there at all. In Bavaria, it is the expressed aim of the largest local federation that when a competent local committee is available, the village bank should do everything. Some even run elevators.

stocks. It is not yet certain whether the alliance will prove permanent. The attempt to send to Parliament special co-operator members seems for the time being to have proved a failure. The whole idea of co-operation is opposed to strikes or strife, and the compulsory element in Trades Unionism is incompatible with the individualism of its new ally.

From the above it will be seen that while a society may have one object, the organisation may be put to quite a different use, which may or may not be compatible with the original object.[1] The stated objects of a society may similarly be very different from the advantages which the promoters hope will accrue from it. The main basis for the enthusiasm which co-operation gives rise to rests in the indirect results. Gide, for instance, writes :—All co-operative associations possess considerable value; they teach their members not to sacrifice any part of their individuality or their spirit of enterprise, but to develop their energies by helping others while helping themselves; to place the end of *economic activity in the satisfaction of wants, not in the* pursuit of gain; to raise the moral level by doing away with advertisement, fraud, the adulteration of food; to abolish all the methods by which men exploit their fellow men, and all causes of conflict.[2]

It is this educational and moral value of the movement that attracts the patriotic and the public-spirited. Co-operation not only develops the latent business capacity of farmers, it produces leaders, it encourages the growth of the social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Co-operation instils into men's breasts ideas of hope and progress and revolutionises their outlook on life. When, however, the question is one of defining the objects of a society, it is advisable to exclude political and religious ends which may lead to misuse, and to concentrate on one or more of the many factors that lead to increase of wealth or on the removal of one or more of the many defects that lead to poverty. The objects of a society should be to give effect to the teachings of economics.

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[1] In Egypt, it is reported that Co-operative Societies were used by the extremist party for their political ends and then dropped when the political purpose had been served; the result was the failure of many societies.

[2] Political Economy, p. 495.

In order to complete this chapter it is necessary to reproduce the definitions in the Bombay Act (VII of 1925) which reflect the classification there adopted :—

(1) A "Resource Society" means a society formed with the object of obtaining for its members the credit, goods or services required by them ;

(2) A "Producers' Society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society ;

(3) A "Consumers' Society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society the profits accruing from such supply and distribution ;

(4) A "Housing Society" means a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by-laws ;

(5) A "General Society" means a society not falling under any of the four classes above mentioned.

The Registrar shall classify all societies under one or other of the above heads and his decision shall be final.

A Society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class.

LIABILITY.

FOR some reason or other, there seems to be more unnecessary controversy over the question of liability of members of co-operative societies than over any other. The undoubted benefits of retaining unlimited liability in small rural credit societies are so marked that an impression has gained ground that unlimited liability was deliberately adopted in order to secure those benefits; while on the other hand, this principle is regarded as a stumbling block to the spread of co-operative credit in such countries as England and America. As an instance of the first, there may be quoted Mr. Wolff's remarkable statement that "Raiffeisen adopted unlimited liability in order that societies should stand on no etiquette with candidates, consider well whether such were eligible and unsparingly supervise them."[1] The simple fact is that when Raiffeisen founded his first societies, there was no privilege of limited liability accorded by the law. Of the second view there may be quoted, as an instance, Professor Carver's opinion that in the United States the principle of unlimited liability would absolutely prevent its being even seriously considered by fairly prosperous property-owning farmers.[2] It so happens that unlimited liability is the ordinary rule of business and of many social institutions, and is only replaced by limited liability under special conditions and under special regulations. In actual practice, under wise restrictions, it possesses no serious dangers. As the late Professor Alfred Marshall pointed out, the term Joint-Stock Company in early times meant little more than association of a few members of the same family, or a few neighbours having intimate knowledge of one another, who united their resources, or parts of them, for some venture. As a rule the venture was one which required a larger capital than any one of them possessed

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[1] Co-operation in India, p. 63. See Fay, Co-operation at Home and Abroad, p. 354 (2nd Edn.). The German Law of 1867 prescribed unlimited liability for all societies. The Law of 1889 permitted limited liability.

[2] Principles of Rural Economics, p. 281. The fault would not lie with unlimited liability but with lack of mutual trust.

or else it involved risks, the whole burden of which was too great for any one of them to bear. The joint-stock principle in England was for some time applied almost exclusively to trade with distant lands[1] and later to exploit the mineral resources of the country. The wild speculation of 1700-1720 evoked a law, under which the privilege of trading in joint-stock could be obtained only by special charter. As each member of such a company was liable for all its debts, a prudent and responsible man was unwilling to take a share in it, even though it afforded reasonable prospects of high gains, unless he knew enough of his fellow members to be sure that he would not have to bear a great part of the burden in case of failure. The first steps towards legalising limited liability were taken timidly in England, and it was not until 1862 that the full privilege of limited liability was made general.[2] It soon became universal in regard to railroads and is gradually spreading in banking and manufacturing, and other industries. But nowhere can any person or body of persons claim limited liability in any enterprise without subjecting themselves to certain drastic restrictions embodied in the Company Law of the land. Limited liability, then, is a privilege of quite modern introduction, hedged round with conditions. These conditions are not suitable for such small societies as village banks or even ordinary agricultural societies. Where a large amount of capital is required for any enterprise, it becomes impossible to confine the contributors to members of a small circle sufficiently intimately acquainted with each other's affairs to ensure that mutual trust which is essential when liability is unlimited. It is also true that where the sharers in any enterprise are drawn from such a wide circle that mutual acquaintance of an intimate nature cannot be guaranteed, then unlimited liability is dangerous. Quite apart from what the law permits or does not permit, unlimited liability

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[1] The East India Company is a conspicuous example.

[2] Marshall, Industry and Trade, pp. 312-331. Limited liability was allowed to a certain degree by an Act of 1825, and another of 1844. Liability may be limited by the amount of a share. A share may be fully paid-up, in which case the holder has no further liability except to refund dividends improperly paid, or only partially paid-up, in which case the remainder constitutes reserve liability. Or liability may be limited by the guarantee of members to pay a certain sum on liquidation in place of, or in addition to, share capital. The English Limited Liability Act of 1856, at first excluded Banking and Insurance Companies and the first Indian Act (XIX of 1857) was almost literally copied from it. Banking Companies in England were allowed limited liability in 1859, and in India in 1860. The English Law of limited liability was taken from the French Law.

has been found to carry with it certain advantages of considerable importance in a Co-operative Society In the first place, it is the cheapest form, it is the only security that can be developed in a very poor community, it is the only security on which working capital can be secured for the business [1] Schulze Delitzsch considered this unlimited liability indispensable at the beginning, in order to put all on guard in an association composed of persons not yet accustomed to forethought in financial matters It would oblige each to watch his associates as well as himself Later on, when the members have become better trained and acquainted with each other, and lenders appreciate their credit value, they might limit their responsibility [2]

Actually this takes place automatically for as societies accumulate their own funds, shares and reserve, the unlimited liability becomes of decreasing importance, until the stage is reached when the society possesses all the funds its members require, borrowings from outside cease, and the members have no liability at all Experience will show whether this will be accompanied by a weakening of the co-operative spirit

Schulze-Delitzsch and his immediate successors warmly advocated unlimited liability, but the national convention of his societies in Germany in 1894 passed a resolution favourable to limited liability and in 1896 declared that no distinction should henceforth be made in the matter [3] The House of Lords Committee on the Thrift and Credit Bill regarded unlimited liability as a wholesome condition It creates confidence among intending depositors, secures careful discrimination on the part of the managing members in the lending out of the bank's money to borrowers, and also

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[1] Sir H Plunkett's Evidence before the House of Lords Committee 'The moment you begin to say—well, after all it only costs us so much if the bank bursts,—the bank will burst' *Cf* also Carver, p 281 —Among a few very poor farmers, no one of whom owns more than a very few hundred dollars worth of property, and all of whom are about equally wealthy or poor, the principle of unlimited liability is essential in order to secure credit on favourable terms and is no serious drawback from the standpoint of the individual farmer The old Transvaal and Orange Free State Laws did not allow limited liability to Co operative Societies The Union Act of 1922 legalised it

[2] *Cf* Herrick pp 272 273 —Experience has fully proved the truth of this But by the time the members can limit their liability they have learned that there is nothing to fear from unlimited liability, wisely controlled

[3] Herrick, p 275

secures some assurance that the money will be used for the purpose for which it is borrowed.

The value of the unlimited liability of a poor member cannot be gauged otherwise than by experience. Even Mr. Wolff, when giving evidence before the House of Lords Committee, agreed that the unlimited liability of a borrowing member who had borrowed to the full extent of his credit was not worth much, and seemed to admit that the unlimited liability was practically only the liability of the benevolent man, the squire or some person of that kind, who gets nothing from the risk he runs. It will be remembered that Raiffeisen tried to keep the big landowner in the society, even though in such a case the poorer members are inclined to yield the control to the rich.[1] The disinclination of those better off to join credit societies is, of course, not unreasonable where the societies are not corporate bodies. The system known as unlimited liability in Germany is well calculated to frighten away the more wealthy farmers. There, a creditor may sue any member for his debt and recover from him and leave him to recover from the other members. In England, where there is unlimited liability without incorporation, the difficulty is surmounted by appointing trustees who control the funds, enter into legal contracts, etc., and so become the defendants in any suit. In India, societies are corporate bodies, and it is the society, and not the members personally, which enters into contracts. Accordingly, the unlimited liability of the members is, what is termed, unlimited contributory liability; that is to say, the members are liable to make contribution to any deficiency in the assets on winding-up. They must make good this deficiency somehow, even if the richer have to bear most of the burden; but as it is only liability for capital borrowed (in the way of loans and deposit) and as borrowing by the society is controlled by the members, the latter are in a position to control their own liability. It cannot be doubted that even in these circumstances the more well-to-do cultivators prefer to stand out, but experience shows that their fear is not well grounded. However, in India, we can hardly expect more public spirit than is shown in more advanced countries such as Ireland, where we read that when credit societies began to spread into districts where comparatively well-to-do farmers might have joined them, these men were frightened

[1] Herrick, p. 293.

away by the prospect of being responsible to an unlimited extent for their neighbours [1]

Where all the funds belong to the society (as share capital and reserve) there is no liability and there is some danger that the ties which bind the members together will be loosened The fact that all the members are jointly and severally liable for outside debts involves many conse quences (1) members must be selected as obviously every one wants to be sure that a new member will be able to bear his share of the common burden, (2) members must be formally admitted so that there will be some proof that they have accepted legal liability for the debts of the society as they stood on the date of admission, (3) members must be allowed to withdraw in case they find the society incurring a heavier liability than they desire to share in (4) the liability of past members must continue for a period so that the surviving members have opportunity to proceed to liquidation if they consider that in consequence of withdrawals the liability is becoming too great for them (5) members must not be allowed to transfer their share or interest to any one they please, but must only transfer to or through the society for the survivors must be sure that the transferee is fit for his liability[2] (6) the members must be able to expel any one whose liability is worthless or who has pledged it in another society of unlimited liabi lity and to take action against defaulters by arbitration procedure, (7) the list of members is the list of persons liable and so must be kept up to date the date on which

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[1] Rural Reconstruction in Ireland p 142 The distinction between limited and unlimited liability is clearly put in section 60 of the original Indian Limited Liability Act (XLV of 1857) — In the case of a company being wound up by the court or voluntarily the existing shareholders shall be liable to contribute to the assets of the company to an amount sufficient to pay the debts and liabilities of the company and the costs charges and expenses of winding up the same with this qualification that if the company is limited no contribution shall be required from any shareholder exceeding the amount if any unpaid on the shares held by him This is reproduced in more elaborate form in the present Companies Act *Cf* Section 156 (*i*) and (*iv*)

[2] A Joint Stock Company can ordinarily only object to the transferee if the share carries a reserve liability if it is fully paid up the holder has the right to sell freely An extreme case will illustrate the point Suppose a society or company with a large reserve liability is tottering towards bankruptcy in the absence of any restrictions the shareholders could sell to the nearest lunatic or minor for a nominal sum as the lunatic or minor has no legal liability the reserve liability would be worthless There is a proposal under consideration to amend the Companies Act so as to empower Directors to expel a shareholder from a joint stock banl for conduct prejudicial to the interest of the bank such as defaming its credit organising a run on it etc

any one ceases to be a member must be carefully entered, as from this date commences the period of liability of a past member; (8) accounts must be strictly kept and duly audited so that the extent of the liability can be definitely established, and all members must have the right to see the accounts[1]; (9) amendments to by-laws must require a considerable majority of the members, as an amendment may alter the liability; (10) the members in general meeting must settle the maximum liability they are prepared to undertake; and (11) must have full power over the employment of funds; (12) a reserve fund is desirable to protect the liability, as any loss will first fall on the fund; accordingly (13) a limitation of dividend is desirable so as to leave more for reserve; (14) members must have the right to secure independent inspection of the accounts and in the long run (15) to bring about the liquidation of the society and so definitely close their liability. In these days it is necessary to add that there must be no pressure from outside to make the society do what its members consider it unwise or dangerous to do, such as to admit members or elect the Committee on religious grounds. Where liability is unlimited, there must be intimate mutual knowledge between the members, and this can only be secured by confining selection to a small area. Where liability is limited, there is less need of mutual knowledge of each others' affairs, the area can be larger, the number of members can be greater and the whole transactions of the society can be carried on on a grander scale. The need of the unselfish co-operative spirit diminishes, the bond becomes purely an economic one, and the educational and moral value of the society declines unless provision has been made for some compulsory contribution to an education fund, the management of which will serve to remind members of their duty to the society.

Unlimited liability is protected by the points noted above; in a credit society it is further safeguarded by the restriction of loans to productive purposes, so that the borrower will be financially stronger after expending the loan than before; by the insistence on sureties and on punctuality of repayment; by supervision of the expenditure on the object of the loan and the power to recall if the money is misapplied; and, finally, by the building up of a compulsory reserve which is declared indivisible, even in the

[1] A public company and Co-operative Society are compelled by law to have their accounts properly audited. A private firm is under no such obligation and it is very exceptional for a private firm to submit its accounts to an outside auditor.

event of dissolution of the society. Thus, if the expenditure of a sum borrowed yields less than itself in return, the loss will fall first on the member, secondly on his sureties, thirdly on the reserve, fourthly on the share capital, if any, fifthly on the unlimited liability of the members and finally on the creditors of the society. Experience shows that the protection of the latter is complete where there is effective machinery to enforce liability through prompt liquidation of bad societies. But where defects are allowed to continue without the intervention of the Registrar, no safeguards, however carefully designed, will prevent disaster.

A further protection of the creditor was evolved in Burma by grouping societies into Guarantee Unions; each society in a Union guaranteed the loans of other societies from its financing agency up to an amount equal to its own borrowings of the previous year. This type of Union spread to some other provinces but it has not proved a success when put to the test. It broke down completely in Burma[1] and is a failure in the Central Provinces.[2] In Madras, the earlier unions were both supervising and guaranteeing but as a result of criticism, a new type of union developed which did not guarantee but only supervised. With the financing of societies it had no direct connexion.[3] But central banks still insist on applications for loans by affiliated societies passing through these unions who recommend at their discretion.

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[1] Report of the Committee on Co-operation in Burma (1929), paras. 52—54.

[2] Annual Report for 1927.

[3] Report of the Committee on Co-operation in Madras, p. 25, para. 21.

INTEREST.

THE question of interest has always played an important part in the co-operative movement In the industrial world, it has for long appeared to the workers to be unfair that the owner of capital should receive not only a fair rate of interest, but also a profit in addition, and worst of all, a control over the industry To their mind it seemed that a more just arrangement would be to give a fair interest on capital, and to distribute to the workers the profits accruing from their labour, while the control of the industry might well be partly, if it could not be wholly, in their hands The English co-operative movement has undoubtedly achieved a great measure of success in this direction Capital receives five per cent interest and is completely ousted from control Even although one significant result of the movement has been to place a little capital in the hands of each co-operator, amounting in all to a very large sum, the temptation to give capital a right to profit or control has been sternly resisted Self-help and thrift have been the chief means whereby co operation has won this success

In agriculture, the conditions are so widely different from those surrounding other industries, that self-help and thrift alone could not help the cultivators to surmount their difficulties The cultivator receives neither a weekly wage nor a daily profit He has to wait several months for the return on his labour, and, except where mixed farming is the rule, he receives his income at only one or two seasons in the year Further, although over a long period of years, a good average return is practically certain, he is constantly subject to the caprice of the weather and can seldom foresee, any distance ahead, whether the next harvest will be a bad one or a bumper It is for some such reasons as these that the cultivator needs credit, and, needing credit, must pay interest Now everywhere and in almost every country and throughout all historical time for which records exist there is, and always has been, a class of persons who seek to make profit from the cultivator's necessity The independent nature of his calling and his habitual neglect of accounts render him a peculiarly easy victim, while, wherever he possesses transferable rights in lands, the security thus

available makes him a peculiarly safe victim. Of this, one result is that the small peasant proprietor is generally overburdened with debt, and another is that co-operative credit is now being widely, almost universally, advocated for him. The question of interest thus calls for somewhat detailed treatment. The subject is, unfortunately, for calm economic discussion, mixed up with religious doctrine, and, accordingly, it may be of some advantage to begin with a brief historical survey.

It is not improbable that the objection to interest arose from the fact that in early times the investment of money for productive purposes was little resorted to. Even under the system of self-sufficing agriculture, the need for productive credit would be small. In every age, however, men are apt to have needs or desires beyond their immediate means to satisfy, so that borrowing for purposes not ordinarily classed as productive would not be unknown. It is thus not impossible that the prohibitions against interest were aimed at unproductive expenditure.[1] Certain it is that as the opportunities for productive expenditure on a large scale have increased, the antipathy against all interest has been changed to antipathy against excessive interest or usury.

In ancient India, the Hindu law givers seem to have aimed at controlling the rate rather than at prohibiting interest altogether. Manu allowed 15 per cent. per annum on secured loans, and 24 per cent. per annum on unsecured. The rate was to be higher for low caste people than for high caste. The highest limit to which interest was to be allowed to accumulate was double the amount of the principal (Damduppat). Usury was condemned.[2] Compound interest

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[1] *Cf.* Ashley: Economic History, Book I, Ch. III; also Taussig, Principles of Economics, Vol. II, p. 31.

[2] *Cf.* Professor Kale's Indian Economics, pp. 442-443, 2nd Edn. See also The Cambridge History of India, Vol. I. The Vedic Indian was an inveterate gambler, and he seems always to have been ready to incur debt. As a result he might be reduced to slavery (p. 98)..... We read of wife or children pledged or sold for debt..... In a Jataka tale, money-lending, trade, tillage and harvesting are named as four honest callings (218)..... According to Vasishtha, the rate of interest varied with the caste, the highest paying two, the next caste three per cent. per month, and so on. The same author prohibits Brahmins and Kshatriyas from being usurers (248)..... The old Sutra rule, confirmed by Manu, permits interest at 15 per cent. annually, but for men of low caste the interest may be sixty per cent., this is where there is no security. No stipulation beyond five per cent. per mensem is legal. Debts unpaid shall be worked out by labour by men of low caste. (287) *cf.* also Samaddar's Economic Condition of Ancient India. The food offered by a usurer was forbidden to the Gods and also to the Brahmins.

was forbidden · one shall not pay or receive an interest beyond the annual or what is unapproved or unaccumulated, nor compound interest, nor periodical interest, nor that which is privately stipulated nor corporeal [1]

Amongst Christians the precepts of Deuteronomy[2] have formed the basis of a long series of efforts, at first to suppress, and, later, to control the taking of interest For centuries the matter was regulated by the law of the church, and penalties of a religious nature were prescribed So long as there was little opportunity for the accumulation of wealth and equally little scope for its investment, the law of the church sufficed to restrain Christians from practising money-lending Agriculture was confined to producing the requirements of the household, it provided little material for trade Trade and commerce were undeveloped, and credit, as now understood, was hardly known Where funds were needed for the prosecution of any enterprise, they could be obtained by including men of wealth to share in the risk and the gain So long as there was no fixed return promised for the use of the money, but an uncertain profit, there was nothing unlawful in lending With the steady advance of civilisation, however, the law of the church alone seems to have been considered insufficient to prevent the spread of money lending, and there began a long series of efforts to check the practice by legislation, the first English Statute was enacted in A D 1488 This declared void all contracts for lending anything at interest, and rendered the parties liable to a fine of one hundred pounds A few years later the penalty was altered to the forfeiture of one half the money lent This proving insufficient, it was enacted that all parties to money lending "shall be set on the pillory, put to open shame, be half a year imprisoned and pay twenty pounds" All these measures failed to suppress usury, and, in consequence, it was next attempted to control the rate of interest In 1546, usury was declared unlawful and the maximum rate was fixed at 10 per cent In the ensuing years, this rate was reduced, until in 1714 it was fixed at 5 per cent, the penalty for disobedience was a fine of three times the money

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[1] English translation of Manu Smirti by G N Jha Vol VIII, p 153

[2] Deuteronomy, XXIII, 19 20, 'Thou shalt not lend upon usury to thy brother, usury of money, usury of victuals, usury of anything that is lent upon usury unto a stranger thou mayest lend upon usury, but unto thy brother thou shalt not lend upon usury Under this precept Jews could lend on usury to non Jews and so became the money lenders of the Western world Christians were not supposed to lend on usury to other Christians

lent. Trade was rapidly expanding and it now came to be seen that these laws were a serious impediment, so in 1834 promissory notes and bills of exchange were exempted. In 1855, it was realised that the attempt to control the rate of interest was as much a failure as the attempt to suppress usury altogether, and the usury laws were repealed.[1]

The modern tendency now is to control the lender by refusing him the aid of the Civil Courts unless he complies with certain regulations. Usury, however, is still an offence punishable with imprisonment in Germany and many States of America. Another tendency is to give the courts power to go behind a bargain agreed upon by the parties and to award such rate of interest as may seem reasonable. The English Money Lenders' Acts give effect to this, and the provisions designed to achieve this end have been repeated in India in the Usurious Loans Act.

A further tendency, as in England (Act of 1927), is to make compound interest illegal.

The verdict of history seems to be that the attempts to suppress usury failed to achieve their object. The laws retarded economic development; they encouraged the hoarding of money and jewellery and led inevitably to schemes of systematic evasion. For instance, it is easier to punish a man than a corporation, so that a town might lend when a man could not, and instances of this frequently appear.[2] The laws broke down before the great expansion of industrial and commercial activities of the sixteenth and seventeenth centuries. One very important effect resulted which has left its mark on England and Europe to the present day. The prohibition applied only to Christians. The Jews were allowed to charge interest from gentiles and, accordingly, they acquired a monopoly of financial business and financial power which has placed them in a position of great advantage. In consequence, or perhaps it would more be correct to say in part consequence, they have incurred widespread unpopularity and have suffered cruel persecutions. The position is not without a parallel in the Western Punjab.

The experience of England suggests that the tendency of remedial legislation, which increases the money lender's

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[1] *Cf.* C. L. Collard: The Money Lenders' Acts, pp. 1-2; also Lipson's Economic History of England. In mediæval times all money lender's property was confiscated on his death.

[2] *Cf.* Lipson, p. 530.

difficulties and diminishes his profits, may be to send up the rate of interest in the ordinary money lender's transaction. This rate is always high. The lender has to run considerable risk, unless good security is forthcoming; he has to face constant difficulties in enforcing his contract and suffers frequent losses.[1] His interest charges must cover these risks, must allow for these difficulties and must recoup him his losses, and, perhaps, in addition, they should recompense him for the low esteem in which he is commonly held. A considerable portion of his business would not be effected by the introduction of any alternative system of credit, however widespread it might be. There will always be improvident people, expectant heirs, or even men in good business suddenly placed in a position in which they are in urgent need of ready cash but without a marketable security which they could offer to a bank. But from many of the evils attendant on money-lending the only practicable means of escape seems to be a sound systems of thrift and co-operative credit, spread throughout the land and rendered available to all whose character and reputation show them to be deserving of trust.

From the above it will be seen that the attitude towards interest adopted by the mass of any people must have a very important influence on their material progress. In Europe, Jews amassed wealth, while Christians remained poor. In India, and probably elsewhere, Muslims have remained backward while other races have advanced. The refusal to take interest in any form entails, a complete abstention from banking and other transactions involving credit. Without trade and commerce on a large scale, no country, no people can amass wealth, and without wealth there can be none of the many amenities of civilisation requiring the expenditure of large sums of money. Many Muslims refuse to take part in trade: many will not invest savings in joint-stock companies; many are discouraged from practising thrift for lack of the incentive which exerts so powerful an influence amongst other peoples. A poor people cannot pay much in taxation and so cannot enjoy such things as free education, the benefits of large public works, such as metalled roads, railways, bridges and harbours; and without these they are compelled to waste time, energy and strength, which could be devoted to better ends. It is considerations such as these which have led some friendly critics to deplore the prospect that Muslims must always

[1] Walsh. Usurious Loans Act, p. iii.

remain backward. Were this inevitable, then the future for a large portion of the population of India would indeed be gloomy: but it is possible, it is probable, that a solution will be found in co-operation. Co-operative credit seeks to remove the objections to interest by reducing it to the bare minimum required to attract the money needed, and when there has been accumulated a sum sufficient for the needs of any community, there no longer remains even this need for the payment of any interest at all. In several societies already a stage has been reached when it is no longer necessary to charge any interest on loans.

The co-operative movement deserves the close study of Muslims as it seems to offer the only solution of their difficulties in regard to interest. Laws controlling the rate of interest have not succeeded. The experience of other countries confirms that of England. In Austria, for instance, similar laws have proved in vain: the stricter the law the greater was the cunning of the money lender in circumventing them.[1] Of Spain it is said that the law of 1909 is almost everywhere frustrated.[2] Were there any success to record, it would have been published abroad, but nothing of this nature is forthcoming. The only solution seems to be to confine the attack not against all interest but against excessive interest.

If this be accepted, the question arises "What is a fair interest?" Interest itself is not easy to define. It, in early days, meant any payment for the use of money, and the idea seems to have involved a fixed fee so that a share in any enterprise was not included. Later interest came to mean compensation for non-fulfilment of a contract, so that while a lender could not charge for money repaid within a stipulated time, he could receive interest for deferred payment. In the Usurious Loans Act it is defined (section 2, clause 1) to include the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise. This definition limits the term "principal" strictly to the amount of cash or kind advanced: where a lender deducts the interest in advance and hands over the balance to the borrower, the principal sum is that which is handed over. In this sense, interest means not only the charge for the hire

[1] Faber: Co-operation in Danish Agriculture, p. 10.

[2] Ward: The Truth about Spain, p. 229. But in comparatively recent times the German legislature has brought back the legal prohibition of usury. Usury is still regarded as a criminal offence, but the definition of what is usury is not strict. Ashley: Economic History, Book I, Ch. III.

of the money (or wages of capital) but includes so much of the costs of borrowing as are paid to the lender. In a good co-operative credit society, these costs should be very small. Ordinarily by "interest" is meant that sum which will induce an owner of money to part with it temporarily under conditions which include a practical certainty of its return. The rate of interest, thus defined, is easily ascertainable with sufficient accuracy from the return accruing on government paper at the current price. Thus, if Government paper for Rs. 100, bearing interest at $3\frac{1}{2}$ per cent., is purchasable in the open market for Rs. 60, the rate of interest is $5\frac{5}{6}$ per cent. The rate, thus calculated, is usually the minimum rate at which money can be borrowed. It varies with the demand for money and the supply at any given time.

To this sum, in ordinary transactions, there must be added something in consideration of the fact that the security offered is not so good as that offered by Government. This addition is really of the nature of insurance against loss, and over a long series of transactions it should be sufficient to make good all losses due to defective security. It depends upon the security offered, i.e., upon the risk of lending.[1]

A further addition may have to be made for the cost of collecting the loan, especially if the borrowers do not repay punctually and willingly.

A further addition has to be made for the costs of the lender incurred in his business, e.g., office rent, clerks' pay, stationery, etc.

A further addition may have to be made if the demand for money fluctuates widely; if during part of the year some of the available money lies idle, earning no interest, then all the income required under the above heads must be obtained from the gross interest charged for the period during which it is being earned.

In the transactions of a village credit society these items have to be considered and the rate of interest has to be fixed so that over a series of years the society will suffer no loss. In so far as the interest charged just fulfils this requirement, the society is carrying out the co-operative principle of rendering services at cost. But prudence suggests

[1] Or in other words, on the confidence which the lender reposes in the borrower or which the borrower inspires in the lender.

that the rate of interest should be pitched a little higher than this, so that there will always be something in reserve. Practical expediency suggests even more; the borrower, it is urged, should be made to pay a little more than the cost of lending so that there will in time grow up from the surplus a common fund which may be regarded as the result of compulsory thrift.

The building up of a common capital from this source has the advantage that those who make most use of the society, and so presumably gain most from it, contribute in greater degree to the common fund. The main point to bear in mind is that, in co-operation, capital is only entitled to a fair interest and nothing more; it carries with it no right to any share in the control.

To complete the brief note on the history of usury laws, it may be of interest to note that, in India, by an Act of 1773, the maximum rate of interest was fixed at 12 per cent. per annum, but by Act XXVIII of 1855 all usury laws were repealed and the interest agreed upon by the parties was made legally recoverable. The text is as follows:—

Section II.—In any suit in which interest is recoverable the amount shall be adjudged by the court at the rate, if any, agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the court shall deem reasonable.

Section III.—Whenever a court shall direct that judgment or decree shall bear interest or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the court shall think fit.

Section IV.—A mortgage or other contract for the loan of money by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest shall be binding upon the parties.

Section V.—Whenever under the Regulations of the Bengal Code, a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of 12 per cent. per annum: Provided that, in the latter case, the amount

deposited shall be subject to the decision of the court as to the rate at which interest shall be calculated

Section VI —In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein, or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the court shall deem reasonable [1]

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[1] For a detailed study of the history of European views on interest, see English Economic History and Theory by W J Ashley Book I, Ch III, and Book II Ch VI

CONDITIONS NECESSARY TO MAKE A CREDIT SOCIETY CO-OPERATIVE.

In paragraph 3 of their Abstract Report, the Committee on Co-operation in India (1915) give a statement of the conditions which they considered must be fulfilled in order that a society may be fully co-operative. The Committee were referring to credit societies only as they were chiefly concerned with the financial aspects of the movement. This statement is interesting as indicating the conception of co-operation held at the time when the Report was written. Since then agricultural co-operation has been thoroughly examined, and much fresh light has been thrown on its real position in rural economics. The Committee were rather obsessed with the Raiffeisen system of credit and gave far too little attention to co-operation as the only system of organisation suitable to agriculture. It is not necessary to be poor to derive benefit from co-operation, just as it is not necessary to be rich to derive benefit from a joint-stock company, under both systems the same amount of capital would be needed to achieve the same object. Agriculture differs from other industries in that it is carried on by a very large number of workers, each of whom controls a certain amount of capital independent of the rest. Every farmer is, to a certain extent, a capitalist, every farmer is also a labourer, a buyer and a seller, and he is expected besides to be a highly scientific exploiter of the soil. He cannot specialise in all these functions, but he can combine with other farmers and share with them the expenses and advantages of specialists in each branch. Trade, commerce, finance, transport are all organised and between them will squeeze from the farmer all the profits of his industry, unless he too organises and thereby controls his own destiny. It is the rapid organisation amongst those with whom he deals that forces upon him the imperative need of organisation with his neighbours. The Committee on Co-operation produced a report of great value on Raiffeisen credit, and it is to Raiffeisen credit that the following pages especially relate :—

"*The theory underlying co-operation is that weak individuals are enabled to improve their individual productive*

capacity, and consequently their material and moral position, by combining among themselves and bringing into this combination a moral effort and a progressively developing realisation of moral obligation. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of obligation and keeps in view the moral rather than the material sanction."

This refers particularly but not exclusively to Raiffeisen societies. It was originally their particular aim to bring help to the impoverished, the neglected, the forgotten, provided that they could show that they were honest and had productive work offering, on which to employ themselves. The Government of India recited that the object of co-operative credit societies is to substitute for a number of individual credits which are weak because they are isolated, a combined credit which is strong because it is united..... These will be small and simple credit societies for small and simple folk with simple needs and requiring small sums only.

The unlimited liability of the very poor may not realise much on selling up but they do not want to be sold up and the aversion to this is an added stimulus to honesty.

The moral element has been strongly emphasised by the Rochdale school. " Co-operation is a faith as well as a practice " ; but the hard-headed weavers took care that their practice was not unbusiness-like. Co-operation must always be a serious business undertaking, and business success must be assured before higher results can be looked for.[1] It is interesting to recall that, in England, the earliest conflict with authority occurred over that one of their articles of association which provided that a portion of their profits should every year be devoted to education. This article has been conceded in section 34 of the Act, which permits of part of the annual profits being devoted to education, medical relief, etc.

The movement is anti-socialistic, but the socialists have now withdrawn their opposition. It was at one time opposed to State aid, until experience showed that agriculture is not likely to make much progress unless stimulated from outside. It is opposed to State control and sets up

[1] *Cf.* Rural Reconstruction in Ireland, p. 254. For an example of moral benefits, see Rural Denmark, p. 211.

self-help and self-control as its aims. It has from the first appealed to self-help and inculcated self-dependence.

"*Hence the first condition obviously is that every member should have a knowledge of the principles of co-operation, if this co-operation is to be real and not a sham.*"

Elsewhere the Committee write that "most of the faults found in societies are due to the lack of teaching of true co-operative principles, and the importance of proper teaching can scarcely be exaggerated. With this, all who have studied the movement will agree. It is repeatedly emphasised in the reports of the various Committees and Commissions that have sat in the last few years. The principles of co-operation are not generally understood, and few persons appreciate the difference between a co-operative organisation formed for the benefit of its members, and a corporation formed for pecuniary benefit.[1]

In England, the greatest attention has been devoted to the teaching and dissemination of co-operative principles in distribution. The Irish Agricultural Organisation Society was founded "to improve the condition of the agricultural population by teaching the principles and methods of co-operation....." and in India the Government has acknowledged its duty to supply co-operative education through the Registrars and their staff. The connection between co-operation and education is of the greatest importance; so far back as 1879 the English congress was addressed as follows:—

"If the mass of your members are not sufficiently instructed in economic science, in the facts of commerce, in the state of this and other countries, in the history of trade, in general knowledge, and; in particular, knowledge of what you aim at and how you seek it.....if the mass of your members are not sufficiently instructed in these things, there arises a real danger to the co-operative movement, your members become a hindrance and your possessions become a peril and your productive endeavours will continue to be the failure which they too often hitherto have been. Your movement is a democratic movement, if ever there was one. It, therefore, cannot repose on the good sense of the few; its success will depend on the good sense of the masses of your people..... First you must educate your members in your own principles....."

[1] *Cf.* Powell. See also Sinclair:—If we are keen enough to detect the fundamental principles and wise enough to utilise them when found, regardless of their source, the success of co-operation is assured.

It is in the moral and educational elements of the movement that Co-operative Societies differ from Agricultural Banks and Loan Societies.

"*In the formation of a society the first essential is the careful selection as members of honest men, or at any rate of men who have given satisfactory guarantees of their intention to lead an honest life in future.*"

As already noted, honesty and a sense of moral obligation are substituted for material assets and hence the essential principle that members must be admitted after election. "The best security that a Co-operative Society can give is the quality of its members" (Luzatti). What the society seeks to secure is a select clientele elected for their presumable trustworthiness (Wolff). This is not by any means peculiar to co-operation, it is a rule of ordinary banking. "There is no respect of persons in banking. Your doors are open to all sorts and conditions of men, except that you draw the line at dishonesty" (Rae). It is a banker's business to acquire the most accurate information possible regarding the thrift, ability, industry and integrity of his clients and no banker could advance money to a man whom he knew to be dishonest. This first condition seems sufficiently obvious, and yet objections used to be made to the power given in the by-laws to expel members for dishonesty and bad characters were frequently admitted into societies. It is now, however, generally realised that, as the members are all potential borrowers, their character is an important factor in success; and that where liability is unlimited, it is essential to make sure that candidates for membership are not likely to make this dangerous. The importance of the moral element varies with the liability.

This condition is secured in the Act by the necessity of formal admission of members [see definition of member, section 2 (*c*)], by rules under section 43 (*d*) governing admission and under section 43 (*m*) providing for expulsion, by sections 14 (2) *b* and 22, regulating transfer of shares of members, living and dead. Most Provinces have rules under section 43 (*c*) providing that societies shall make by-laws dealing with expulsion of members and transfer of shares and all English societies registered under the Industrial and Provident Societies Act must as a condition of registration determine in their by-laws whether shares are transferable and provide for the consent of the Committee.

"*As regards the dealings of the society, it should lend to its members only.*"

This is provided for in section 29. Obviously, it is little use making elaborate provision for the selection and retention of honest members if loans can be made to non-members not subjected to the same process. This is the principle of all co-operative associations, the confining of benefits to the members and must be the object of all societies (see section 4). No one would advocate that members should undertake unlimited liability for the debts of non-members; but, where the object is not the provision of credit, there is less objection to dealings with these.

"*The loans must in no circumstances be for speculative purposes, which, so far from encouraging thrift and honesty, have exactly the opposite effect. Loans should be given only for productive purposes or for necessaries which, as essentials of daily life, can fairly be classed as productive. The borrowers should be required to satisfy their fellows that they are in a position to repay the loans from the income that they will derive from their increased productive capacity, or that by the exercise of thrift they can effect a margin of income over expenditure which will suffice to meet the instalments of their loans as they fall due.*"[1]

This condition is, of course, borrowed from ordinary rules of sound banking. A banker must know his client, his work and his needs. Says Rae, "You will have to satisfy your mind in every case, before parting with the bank's money that it is required for legitimate business use and not for rash and foolish speculation..... You will do wisely to make it a rule absolute whenever you are invited to lend the bank's money in any shape or for any purpose, to satisfy your mind that the means will exist in available form, to repay the money when due;..... when a man comes to you for a loan, unless the transaction is clearly in the direct line of his business, you have a right to know for what purpose the advance is wanted."

British banks claim that they provide sufficient sound financial facilities and are not shy in making advances on the strength of their customers' known ability and integrity. The larger banks lend far more than the small country banks, they absorbed and provide adequately for most of the needs of the large farmer who can offer satisfactory security. Their branch managers are permitted to rely upon their personal

[1] I have not discussed credit here as I have already issued a long pamphlet on the subject, based on the opinions of many writers. Prof. Gide is very clear; see also Herrick, Seligman, Carver, Nicholson, Dupernex, Huebner and others.

knowledge of the character, habits, reputation and capacity of the farmers in their vicinity and they do in fact advance large sums for current business purposes on this personal knowledge without taking banker's security.[1] In the Report on Rural Credit in Ireland, the Provincial Bank submitted in evidence that it supplied deserving farmers with every suitable accommodation that could prudently be given on business lines. The qualifying adjectives, of course, are significant, and on the interpretation based upon them rests the controversy as to whether joint-stock banks finance agriculture adequately.

There should be no hesitation in enforcing the strictest compliance with this principle; if a banker regarding only the interests of his bank, treats it as a rule absolute, a Co-operative Society, bound by its objects to promote the interests of its members, must be still more strict. The underlying principle is clear. The employment of the loan becomes a pledge for its own value. The bank is not formed to practise lending for lending's sake.....its object is to provide credit for certain approved transactions only, transactions which promise to repay the outlay with interest, to improve the position of the borrower and which are appropriate to his case (Wolff). The creditor's real security consists not in the material assets of the members but in the ability and desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. Each loan should mean so much earning capacity, so much producing power for the individual borrower..... the security in fact lies in the use of each loan for genuine productive purposes.—(Committee, paragraph 2). The Government of India are equally emphatic. "Co-operative credit should provide cash only for productive or provident outlay. It is not its object to supply capital for fixed outlay and it is not to provide money for anyone who asks for it. Its real object is to provide agriculture with ready money for the one purpose of making such agriculture more profitable. There must be a good chance, a moral certainty of the money lent reproducing itself with increase."

In spite of the obvious soundness of this condition, it is the one most frequently broken. The Act itself is silent on the objects for which loans may be granted but

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[1] Dampier Whetham: Politics and the Land; and Walter Leaf: Banking.

most provinces have rules under section 43 (*c*) requiring societies to make by-laws defining the purposes for which advances may be made and Local Governments may make rules under section 43 (*o*).

Examples of rigid restriction on the objects of loans are provided by the Land Improvement and Agriculturists' Loans Acts.

In India a very serious, even a dangerous, relaxation has already been permitted in the addition of necessary purposes, but in this same paragraph the Committee insist that "*loans must be given only when they are really necessary and desirable.*"[1] Even at the risk of over-elaboration the following extract from Mexon's "English Practical Banking" is added, "a banker will wish for information as to the amount of advance required, the purpose for which it is wanted, the length of time for which it is required, and the security which is to be given for it. Banking advances should be for commercial purposes, as an addition to working capital" (what are here called "productive purposes").

Bankers do not necessarily make special enquiry into the object of the loans, but it is the duty of managers to keep themselves conversant with the circumstances of their clients and to satisfy themselves that the money is required for some legitimate business purpose. It is here that banking differs from money-lending, and it is the neglect of this rule that makes the ordinary money lender such a curse to society.

"*When a loan has been given, it is essential that the Committee of the society and the other members should exercise a vigilant watch that the money is expended on the purpose for which the loan was granted.*"

This is merely an adaptation of a general precaution in banking. "If you trust people with your money, you have a right to at least a general notion of what they are doing with it" (Rae). It is useless making rules as to the objects for which a loan may be granted if no steps are taken to see that the money is really devoted to the object approved. The insistence on supervision by the Committee is characteristic of co-operative credit but Government also directs its revenue officers to see that loans under the Land

[1] *Cf.* Wolff:—Necessity alone will not justify loans if there is no certain prospect of recovery.

Improvement Act are spent on the particular works for which they were sanctioned.[1]

Rules may be made under section 43 (*g*) and (*o*). This insistence on supervision by the Committee on the expenditure of the sum lent is necessary in the interests of outside depositors and under the Friendly Societies Act, a credit society is not allowed to accept deposits from non-members unless its rules provide for this supervision. Prior to 1898 such deposits could not be accepted at all, but in that year Sir Horace Plunkett succeeded in getting an Amending Act passed.

"*If it (the money) is improperly applied; it should be at once recalled.*"

This is merely an insistence on honest dealing. The same rule applies to loans under the Agriculturists' Loans and Land Improvement Acts. Mr. Wolff adds: "a man misapplying a loan would, of course, not be allowed to borrow again. In fact he would be got rid of as being untrustworthy." Loyalty to the society must be maintained and this kind of misconduct should be a ground for expulsion [section 43 (*m*)]. There should be a clause in the bond embodying this principle which should also be included in the by-laws and may be made a rule under section 43 (*o*).

"*It is further advisable to add to the general supervision of the society the special supervision of individual members, by taking personal sureties in the case of each loan. In the event of any default by the borrower an instant demand should be made on these sureties.*"

No well-managed bank would think of advancing a loan without security, but in co-operation the primary security for all loans should be personal. Says Rae, "never make an advance to any one except on security of approved quality and adequate value.....no one is as safe without security as with it..... the only rule which insures safety in every case is never to make any advance without security..... The proper time to stipulate for security

[1] For a Canadian view, see the Saskatchewan Report, p. 49:—'There exists a sharp difference of opinion as to whether, after loans have been advanced, inspection should be tolerated to determine whether the loans had been so expended, and if not, whether they should be recalled. The general attitude is clearly indicated in the reply made by a farmer: I do not think the farmers would like it, but I am satisfied it would be to their interest.'

should be before the opening of an account, not afterwards.. ..... The chief objectors to giving security for advances are those who have none to give.....no doubt there is security of a kind in honest intention, but honesty itself may be overthrown by unforeseen disaster... .....no amount of honesty will shield a man from misfortune."

Government has no doubt upon this point, it insists on security for all loans advanced to agriculturists. Some provinces insist [under section 43 (*c*)] on by-laws providing for security and rules may be made under section 43 (*o*).

With the exception of the Italian "loan of honour" there is, says Herrick,[1] no co-operative credit society in Europe which does not demand of borrowers as safe security as is exacted by an ordinary bank. The question is more fully discussed in the notes under section 43 (*o*). The old English country private banks used to lend to farmers on the basis of their character, instead of being too exacting in the matter of visible securities which the borrower might have found it difficult to provide. When the big London companies bought up the private banks, it is complained that they insisted on commercial security, and that advances to small agriculturists declined.[2] This charge has since been strongly refuted and it is clear that, in the effort to secure good business, branch managers have wide powers to lend on personal knowledge.

Mr. Darling[3] found that while in Germany, as in India, the primary security for the loan is the character of the borrower, and the further security taken is personal surety, a mortgage is often taken instead. Raiffeisen is said to have been not opposed to the use of mortgage as a collateral

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[1] Rural Credits, p. 467. Mr. Strickland writes: 'The Italian loans of honour without security, which have been quoted in support of an experimental laxity, are loans given to non-members by those urban banks in which a share is of a large amount beyond the means of the poor: the device is non co-operative, and it would be simpler to issue shares of low value for those who need them' (Studies in European Co-operation, Vol. I, p. 159). Mr. Darling, however, writes: 'Loans are made to members and non-members alike.... Honesty of character is the sole security.... there is a special committee in touch with the poor, to enquire into the circumstances of each case. It is characteristic of the Peoples' Bank at Bologna that it still maintains this most humane element in its business. Even if the amount advanced is small, it is a constant reminder to the bank of its ideals' (Co-operation in Germany and Italy, p. 135).

[2] *Cf.* Pratt: Small Holders, p. 172. Green: The Awakening of England, p. 338.

[3] Co-operation in Germany and Italy, pp. 24-25.

security, but Mr. Darling found a distinct tendency to regard the property as more important than character. He notes that there are no rural credit societies for people who have no land and quotes Bubnoff as authority for the statement that in Russia there were no agricultural labourers as members of credit societies as the articles of association forbid advances to members who have no immoveable property. In the Punjab and other provinces of India, there are hundreds of such societies for landless menials and many are highly successful.

The above are the conditions relating to loan transactions. In all cases they merely embody the most elementary principles of sound banking and those who advocate elasticity take upon themselves a heavy responsibility. Any relaxation must result in a marked rise in the rate of interest to cover the extra risk involved. Cheap credit must be secured credit. The interests of depositors alone demand the adoption of the precautions referred to.

"*In the more general matters of the society's business there should, of course, be a Committee of management with a president and a secretary, all of whom, except those who perform purely clerical duties and have no voice in the management, should be members of the society and give their services to it gratuitously.*"

It is, perhaps, the most curious omission from the Act that there is no provision for the constitution of a Committee and for giving it a legal status. The Act, however (*cf.* section 22), assumes the existence of a Committee and most Provinces direct under section 43 (*c*) that one shall be provided for in the by-laws. Local governments may make rules under section 43 (*g*). The question is fully discussed under this section.

Gratuitous services were insisted upon by Raiffeisen and at first by Luzatti, but not by Schulze-Delitzsch; latterly there is a growing tendency towards payment. The Madras Committee do not recommend payment of punchayetdars, except in respect of clerical work undertaken by them. The secretary is everywhere frequently remunerated.[1] The Madras Committee condemn the basing of his remuneration on profits or loans granted, as was the practice, as this provides a temptation which should be avoided.

[1] In Denmark the president of the Co-operative Bank receives a small salary. Howe: Denmark, p. 56.

As has been already shown, the control must rest with the members, and hence the Committee must be appointed by them. A society with a Committee partly appointed ex-officio or by nomination cannot be called co-operative. The Italian law insists that all officers be members.[1]

"*At the same time the ultimate authority should never be delegated to the office-bearers, but should be retained in the hands of the members, who must continue to take a practical interest in the business of the society. With this object the constitution should be purely republican; each member should have one vote and no more in the general meeting.*"

See section 13—

This section states the principle of equitable association which is the foundation of all true co-operation. It distinguishes it from co-partnership. The powers of control vested in the general meeting should be known to the members and the powers of the general meeting should not be curtailed by admitting proxies from individual members. If this dictum is to be carried out literally, the societies must be small; in a society with large membership, it is not practicable for each and every member to take part in the control, and there is a tendency for this to pass into the hands of an active minority. Undiluted co-operation, says Herrick,[2] cannot be practised except by relatively small groups of persons.

Most Provinces by rule under section 43 (*c*) insist on the by-laws dealing with general meetings and rules may be made under section 43 (*f*).

"*All business should be transacted with the maximum of publicity within the society. For example, there should be kept in some place open to the inspection of every member a list showing the loans issued to every member, the names of his sureties and the amount of the loan still unpaid, and each member should be required to know generally how this account stands: general meetings should be frequently held at which the accounts and affairs of the society are fully discussed and explained.*"

The Committee only refer to publicity within the society. If all members are equal and, especially, equal in liability, all have an equal right to know of the society's

[1] *Cf.* Herrick, p. 351:—'The board of directors may engage a manager and a cashier who, upon appointment, must enrol as members.'

[2] Rural Credits, pp. 459-60.

transactions. The only exception refers to members' deposits. Members must not know who is a depositor and what his deposit amounts to. Under the English Act, no one except an officer of the society has the right to inspect the loan or deposit account of any other member without his consent in writing. Mr. Wolff also excludes the list of maximum credits to be allowed to each member [see notes to section 43 (*o*)] but the Committee on Co-operation require this to be fixed at the annual general meeting.

Publicity without the society is usually insisted upon by law. Sir F. Nicholson errs, perhaps, on the side of exaggeration when he writes "Publicity is, in every European country, the first requirement; everything must be laid open to the public view." If the society is well managed, members honest, and repayment punctual, then publicity enhances the credit of the society. Rules should be made under section 43 (*h*) (*q.v.*). Publicity requires the maintenance of proper books of accounts [section 43 (*g*)] which accordingly must be prescribed [section 43 (*h*), *cf.* section 136, Indian Companies' Act].[1]

"*The express object of the society should be the development of thrift among its members, with the hope too, that this idea of thrift may spread in the neighbourhood. To effect this object loans must be given only when they are really necessary and desirable. Further the development of thrift and of a proprietary interest in the society should be aided by efforts to build up as soon as possible a strong reserve fund from profit. The society must also be encouraged to obtain as much as possible of its capital from the savings which its teaching and example have brought about among its members and their neighbours.*"

The promotion of thrift is prominently put forward in the preamble to the Act. As the Committee say: "the object of co-operation is as much to encourage savings as to

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[1] Publicity, of course, is very necessary if liability is unlimited but it is not always popular. In Austria, 'while the farmers are willing to trust the society with their savings, many are still unaccustomed to banking usages, and, when they want credit, they prefer to go secretly to their friends or the money lenders rather than let their neighbours know that they are in need of assistance (Herrick, p. 367). The late Sir W. T. Russell, giving evidence before the House of Lords Committee, ascribed the small amount of members' deposits in Ireland to the fact that the Irish peasant does not like his neighbours to know that he has money, and he does not trust any committee. Sir Rider Haggard quotes one authority who declared as his deliberate opinion that tenant farmers will not co-operate, because, co-operative accounts being open to inspection, they fear that their landlords might raise the rents if it were found that they were prospering (Rural Denmark, p. 190).

grant loans on reasonable terms." The principal direct objects are thus: (1) the encouragement of thrift, (2) the accumulation of loanable capital, and (3) the reduction of interest on borrowed money by a system of mutual credit. See notes to Preamble, where it is shown that a member acquires a right (*cf.* section 12) to deposit his savings in the society and hence there must be control over deposits from non-members [sections 30 and 43 (*e*)]. The formation of a reserve fund may be prescribed by rules under section 43 (*p*); a minimum is ensured by section 33.

The question of thrift lies at the very foundation of the problems of Indian poverty. Thrift depends upon foresight, abstinence or self-control, and security of life and property; and so can only be found in a settled educated community. No panacea for the troubles of India will be of any lasting value unless there be thrift. The great wealth of England is largely due to centuries of thrift; the poverty of India's masses is largely due to its absence in the past. Thrift supplies the capital for all enterprise. The capital for agricultural needs and agricultural improvements must, in the main, come from the savings of rural communities.[1] That the value of thrift is securing more general recognition is made clear by the reports of Registrars.

It is a defect in the Indian system that provision has been made for a distribution of profits on shares; but it should be noted that the Committee contemplate the profits going to reserve and generally the profits should and probably will be limited to a fair interest on capital, the maximum being the same as the rate charged on loans to members. In actual practice, the primary credit societies of India give away very little indeed in dividends. Sound guidance has made good the defect in the Act.

"*With all these must go the elementary business principles of honesty, punctuality, proper accounts, diligence and payment when due. To ensure all this there must be adequate control from within, increasing vigilance and supervision by the office-bearers and a continuous effort by members in learning the*

[1] *Cf.* Irish Report on Rural Credit, p. 8. *Cf.* also Herrick, p. 393. 'Co-operative credit has obtained a firm foothold in Switzerland, but the idea was not introduced on account of any lack of banking facilities..... the little republic is frequently referred to as the only country in which farmers have too much credit.....necessity did not bring co-operative credit into being in Switzerland. It was started because of its moral effect in teaching farmers to be their own bankers and to be mutually responsible for one another.'

principles of co-operation, in meeting frequently, in watching others, in working hard and observing thrift, and in punctual repayment of their own loans as they fall due."

From the above it will be understood that strictness is essential. Mr. Wolff says: " there should be inexorable strictness with regard to the observance of rules and undertakings, not only as to repayment of loans " ; and in another place, " rigorous insistence upon prompt payment is another characteristic feature. Harsh as it may appear to people new to such banking, it is necessary and represents sound policy." Also " checking and controlling is the fibre which runs through the entire organisation."

The Committee omitted a very characteristic feature of Co-operative Societies, namely, the absence of any limit to the number of members. Such a limit is prohibited in Germany, Belgium, etc., and is penalised in England. It may be provided for by rules under section 43 (*q*) (see notes thereunder). It is one of the points distinguishing a Co-operative Society from a Joint-Stock Company (see notes to section 4), and from a society " established with the object of facilitating the operations of such a society " (e.g., a Central Bank).[1]

Mr. Cahill finds the following principles now practised in all Raiffeisen societies in Germany :—

(1) Limitation of area to secure personal knowledge [*cf.* section 6 (1) *a*].

(2) Low shares [*cf.* section 43 (*e*)].

(3) Permanent indivisible reserve fund (section 33).

(4) Unlimited liability [section 4 (2)].[2]

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[1] It is essential to the co-operative idea that the matured society should keep its ranks open to the weaker brethren who are still without, and never pursue strength at the price of their injury or neglect (Fay).

[2] *Cf.* Smith Gordon: Co-operation for Farmers, p. 33. Both the Raiffeisen and the Schulze societies were originally established on the basis of unlimited liability. The Raiffeisen societies, with unimportant exceptions, have preserved this feature to the present day, but the Urban societies have adopted the more suitable form of limited liability..... When the pioneers began their work, they had no option in this matter, for the law did not allow co-operative associations to limit the liability of their members. Also p. 113 :—Unlimited liability is contrary to the inclination of the times, and we find that it is, in fact, gradually being replaced by the more modern system of limitation by shares. A question, which with Raiffeisen was undoubtedly one of principle, has come, now that co-operative organisation is widespread and well understood, to be regarded as one of expediency; and, from this point of view, the victory rests, except perhaps in some exceptionally backward districts, with limited liability.

(5) Loans only for productive or provident purposes [section 43 (*o*)].

(6) Loans only to members (section 29).

(7) Credit for relatively long periods, with payment by instalments [section 43 (*o*)].

(8) Determination every year by the members of each society of—

(*i*) the maximum credit of individual members;

(*ii*) the maximum total of saving deposits receivable;

(*iii*) the maximum total of loans that may be taken up (section 30).

[See section 43 (*e*)]. *Cf.* Committee's Report, paragraphs 52 and 59.

(9) Absence of profit seeking, dividends if paid being limited as a maximum to the rate of interest paid by borrowers for loans [section 43 (*r*)].

(10) Office holders (except secretary), not paid for their services.

(11) Promotion of the moral as well as the material advancement of members.

As will be seen from the references, some of these principles have been embodied in the Act while the others are left to be dealt with by rules under section 43. They will be discussed in their proper places.

Finally there may be included here the Rochdale society's advice to members, chiefly remarkable for common sense. Failures in non-credit societies in India are usually directly traceable to neglect of one or other of these *dicta*.

Rochdale Society's Advice to Members.[1]

1*st*—Procure the authority and protection of the law by enrolment.

2*nd*—Let integrity, intelligence, and ability be indispensable qualifications in the choice of officers and managers and not wealth or distinction.

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[1] From 'Industrial Co-operation' by Miss Catherine Webb.

3rd—Let each member have only one vote, and make no distinction as regards the amount of wealth any member may contribute.

4th—Let majorities rule in all matters of Government.

5th—Look well after the money matters. Punish fraud when duly established by the immediate expulsion of the defrauder.

6th—Buy your goods as much as possible in the first markets; or, if you have the produce of your industry to sell, contrive, if possible, to sell it in the last.

7th—Never depart from the principle of buying and selling for Ready Money.[1]

8th—For the sake of security always have the accounted value of the "fixed stock" at least one-fourth less than its marketable value.

9th—Let members take care that the accounts are properly audited by men of their own choosing.

10th—Let committees of management always have the authority of the members before taking any important or expensive step.

11th—Do not court opposition or publicity, nor fear it when it comes.

12th—Choose those only for your leaders whom you can trust, and then give them your confidence.

The *Rochdale plan* related primarily to stores and is thus prescribed by the late Mr. Holyoake. "It was that the profits made by sales should be divided among all members who made purchases, in proportion to the amount they spent, and that the shares of profits coming due to them should remain in the hands of the directors until it amounted to five pounds, they being registered as shareholders of that amount. The stores would thus save their shares for them and they would thus become shareholders without it costing them anything; so that if all went wrong they lost nothing; and if they stuck like sensible men to the store, they might save in the same way another five pounds, which they could draw out as they pleased..... The merit of this scheme was that it created capital among men who had none, and allured purchasers to the store by the prospect of a quarterly dividend of profits upon their outlay. Those

[1] This abolition of sale on credit proved a powerful stimulant to thrift. People had to save to buy, before they could enjoy.

who had the largest families had the largest dealings, and it appeared as though the more they ate the more they saved '

Raiffeisen slightly modified this by keeping all profits in an indivisible permanent reserve He thus also created capital among men who had none but it belonged to the society and not to the individual members

THE CO OPERATIVE SOCIETIES ACT 1912
(II OF 1912)

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ACT No. II OF 1912.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor-General on the 1st March*, 1912.)

An Act to amend the Law relating to Co-operative Societies.

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means,[1] and for that purpose to amend the law relating to Co-operative Societies; it is hereby enacted as follows:—

The Bombay Act has the following preamble:—

"Whereas it is expedient further to facilitate the formation and working of Co-operative Societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to Co-operative Societies in the Presidency of Bombay;.....it is hereby enacted....:"

The Madras Act (VI of 1932) repeats this.

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[1] If the Act is amended the preamble should run 'promotion of thrift, mutual help and self-help among agriculturists, artisans and other persons with needs in common.' [This old suggestion has now only historical interest.]

Preliminary

Short title and extent

1. (1) This Act may be called the Co operative Societies Act 1912 and

(2) It extends to the whole of British India

Prior to 1904 Co operative Societies could not be organised under a recognised legal form except under the Indian Companies Act They could not obtain the same legal status and privileges as commercial companies without submitting to the restrictions generally considered necessary for their proper control Moreover it must be remembered that without registration no binding force could be given to rules and hence discip line could not be enforced Not only that but associa tions of more than ten persons for the purpose of bank ing are illegal unless registered under the Companies Act (see notes to sec 4) so that there could be no question of starting unregistered societies The Co operative Credit Societies Act (X of 1904) was accord ingly passed to encourage thrift self help and co opera tion It was founded on the English Friendly Societies Act but conferred corporate existence which that Act does not do In this and some other respects it followed the Industrial and Provident Societies Act under which nearly all the non credit societies are registered The latter Act however insists on limited liability

It is important to remember that Co operative Societies are companies which would ordinarily (and can if the members so desire) come under the ordinary company law of the land but they base their claim to exemption from the Companies Act on the ground that their object is not the acquisition of gain by way of profit for themselves or their members The Govern ment of India stated that the object of this measure (of 1904) is to provide the requisite legal basis for the establishment in India of Co operative Credit Societies Legislation is called for not only in order to lay down the fundamental conditions which must be observed but also with a view to giving such societies a corporate existence without resort to the elaborate provisions of the Companies Act The bulk of the non credit Co operative Societies recognised by the law (of 1912) are placed on a footing similar to that of joint stock companies and it will be necessary in practice to see that the Act is not utilised for the benefit

of societies which are not really of a co-operative character "

Bombay yields a very interesting point of law under section 3 (*e*) of the Land Acquisition Act, a society registered under the Co operative Societies Act of 1912 ranks as a society for the purpose of compulsory acquisition of land But the Bombay Act of 1925 repealed the India Act of 1912 in so far as it applies to the Bombay Presidency (section 73), and therefore it has been held that societies registered under the Bombay Act of 1925 are not societies registered within the meaning of the India Act of 1912 and so are not companies within the meaning of section 3 (*e*) of the Land Acquisition Act and therefore are not entitled to the benefit of this Act (Appeal 272 of 1929, decided 7th July 1930, by Madgavkar and Barlee, JJ)

Promotion of thrift —Thrift frugality, economical management, economy (Century Dictionary) This object necessitates the right of a member to deposit his savings in his society (sec 12 notes), this right is of the very essence of a credit society and it is extremely doubtful if it could be restricted by any rule or order of a Local Government As the society may not be able to find useful employment for all the savings offered, it must give priority to deposits from members over those from non-members [sections 30 and 43 (*e*)] Similarly as Central Banks, as a condition of registration, must be established with the object of facilitating the operations of primary societies, they also must give preference to deposits from such societies over those from outside, even though this entails a diminution of income The question of greater or less profit must not be an argument with any Co-operative Society except in so far as it touches the economic interests of the members

The promotion of thrift also renders desirable a saving deposit system , for these societies will furnish to agriculturists a safe method of investing small savings in an institution at their own doors, which is managed publicly by persons whom they know and for objects which they can see and test Such savings have proved here and elsewhere good lying money The Committee considered that when once well started, the Co operative Societies will be used by agriculturists for their savings far more freely than any Government institution can ever hope to be used and that their use will be attended by far greater economic advantages to the country than

any likely extension of Post Office Savings Banks[1] (para 51) Unfortunately non-members depositing in Co-operative Societies have to pay stamp duty on withdrawals, from which they are exempt when dealing with the Post Office Banks Mr English when Registrar of Burma wrote "If co operation can lessen the waste of capital by inculcating thrift, it will be a boon to the country but it must be continually borne in mind that the provision of funds to assist waste or even merely further to raise the standard of living by enabling the cultivator to spend the difference in interest payment in luxury and amusement, is greatly to be deprecated ..... In Burma, borrowing is mostly due to habit and want of forethought and not to necessity,..... ..the mere provision of cheap money through Co operative Societies or otherwise tends, owing to the existing state of public feeling, to induce waste of income rather than thrift" The importance of encouraging thrift can hardly be exaggerated, as Mr Duperney says "The great lesson of thrift will require a great deal of teaching in India where the soil is so fertile and nature so bountiful, that the peasant, however badly off he may find himself in the present, never loses hope in the future He knows that if his present harvest fails, the chances are that in another few months the land will again give forth its abundance Improvidence is often laid to his charge, but the feelings that some observers attribute to this cause may, perhaps with equal truth, be traceable to a deeply seated faith in the future'[2]

Credit societies of the Raiffeisen type throughout Europe have a more active existence than those in Ireland for one or both of two reasons, they are the great centres of thrift for the rural population, and they have trading powers The funds accumulated by thrift enable them either locally (as in Italy) or through a federation (as in Austria) to capitalise and finance the trading side

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[1] The Post Office Savings Banks were originally designed to serve only the towns, they have been extended to smaller towns and large villages but they have not attracted, and were never intended to attract, deposits from the general body of agriculturists Thus there should be no fear of competition between these institutions and Co operative Credit Societies in villages, but the fact that the money deposited in these Post Office Banks is not separately invested but is used by the Government of India for its ways and means adds a touch of delicacy to the problem

[2] Duperney, pp 88 89

of the movement[1] The tendency to withdraw capital from the land instead of investing more in it is remarked upon by many writers It used to be one of the grievances of intelligent Irishmen like the late Sir Horace Plunkett that the deposits of the local Savings Banks were transferred to London and so lost to the Island which has never enjoyed a plethora of money If Indian agriculture is to be supplied with all the capital it can usefully employ, this must in large measure be accumulated by the thrift of co operators[2]

Along with the promotion of thrift must go the checking of improvident lending (Wolff)

Self help —One of the great lessons learned in Europe is that in the long run the farmers succeed best when they help themselves Whenever they become dependent on the Government they keep looking to the government for more aid It is believed to be a correct general statement that rural credit is on the strongest basis in those countries where it has been developed most completely without government aid government should do nothing that can effectively be done by individual farmers or by the farmers collectively through voluntary effort.[3]

Persons of limited means —Miss Webb (Industrial Co operation) writes Co operation is essentially the outcome of poverty and need and has achieved its greatest success amongst the moderately poor The condition that co operators should provide their own capital is apt to prove a hindrance to the extension of the movement to the very poor and, hence arises the hitherto unsolved problem of how to bring its benefits within their reach The nature of the surroundings in which the lives of the poorest are passed the lack of training and of education—in the real sense of the word—

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[1] Rural Reconstruction in Ireland (p 147)

Deposits in Post Office Savings Banks in 1918 19 amounted to 1 882 lakhs of rupees the total working capital of all Co operative Societies in 1918 19 was 1 614 lakhs Deposits in Agricultural Societies amounted to 96 lakhs By 1921 the figures had risen to 2 286 lakhs deposits in Post Office Savings Banks and 2 642 lakhs working capital in Co operative Societie In 1923 the latter stood at 3 504 lakhs In the last ten years there has been a marked decline in private deposits in Joint Stock Banks and a marked increase of deposits and investments in the Post Office Postal Cash Certificates and Co operative Societies

[3] American Commission on Rural Credit Observations Part I pp 13 27

from which they suffer makes it difficult for them to realise the benefits of co operation

The system of obtaining goods on credit is one which has unfortunately become very common among these people owing largely to the uncertain nature of their surroundings and the burden of debt often brings with it an obligation to continue dealing with a particular tradesman

It must be admitted too that Co operative Societies have in many instances ceased to recognise their obligations towards the very poor or have failed to realise that the special needs of poverty call for special methods

The above extract is applicable to Indian conditions It has to be remembered that the conditions in which the very poor live tend to develop the meaner side of their characters and accordingly it is unusually difficult to inculcate ideas of honesty fair dealing and thrift

In Burma the members of societies appear to be disinclined to admit people of the poorest classes land less labourers fishermen and pedlars [1]

The fact that persons of limited means deserve most consideration involves as practical results that small loans to small people must be given preference over large loans to those more well to do and that the savings of the poorer members must be accepted even if it necessitates returning the large deposits of the prosperous

At the same time it must be remembered that heavy debt may reasonably be considered by a society as justifying a refusal to admit a candidate into a credit society Major Jack for instance mentioned that of the cultivators of Faridpur there are six per cent whose debts are far too large for any co operative movement safely to deal with [2] and of Finland it is said that experience has shown that the very poorest do not join Co operative Societies in particular such as do not have a permanent place of residence or fixed income [3] Similarly of Europe Herrick points out that Peoples Banks of the Schulze Delitzsch and Luzatti type generally speaking are not small institutions for feeble folks The American enthusiasts who are hoping to improve the

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[1] Annual Report 1921 p 6
[2] Economic Life of a Bengal District p 111
[3] Co operation in Finland p 12

condition of the shifting and thriftless population by means of co operation will be disappointed to find that this has been accomplished in Europe only in spots where the work is sustained by the ceaseless and unrequited toil of philanthropists devoting themselves to the arduous tasks as priests to their mission[1] Undoubtedly the feeling of economic distress has up to the present been one of the invariable conditions of the co operative movement[2] but as attention is turned from credit to other applications of the co operative principle it becomes clear that the one essential requisite is the marked consciousness of a common interest in the accomplishment of some definite purpose[3] This may be improved credit cheaper supplies or better prices for produce or any other common economic need the point is that while co operation is almost the only avenue of escape from poverty its benefits are equally open to others who are willing to work for the common good of all It would perhaps be an improvement if this reference to persons of limited means were omitted as has been done in the Bombay and Madras Acts[4]

Of England it has been said a large farmer should be his own co operator Large farmers have no interest in ousting the middleman or reducing his profits they are in a position to dictate terms whereas the small farmer is dictated to "[5]

The restriction of the benefits of the Act to persons of limited means is aided by the provisions as to maximum interest of members (sec 5) by the power to fix a maximum loan [sec 43 (*o*)] and by rules relating to profits [secs 33 and 43 (*r*)] As persons of limited means have no money to spare loans for unproductive purposes must be rigidly restricted

2. In this Act, unless there is anything repugnant in the subject or context— Definitions

(*a*) "by laws" means the registered by laws for the time being in force and includes

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[1] Rural Credits p 409

Cf Co operation in Finland p 8

[2] Vogt p 235

[4] In Great Britain an analysis carefully made of the members of typical societies I should own about 90 per cent to be non income tax payers (Tetlow Co operative Auditing p 3)

[5] Levy Large and Small Holdings p 189

a registered amendment of the by-laws :

Burma omits " and includes. . . . . by-laws ".

(*b*) " Committee " means the governing body of a registered society to whom the management of its affairs is entrusted :[1]

Bombay has : " the Committee of Management or other directing body to whom, etc."

Burma has " direction " for " management."

(*c*) " member " includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules : [under sec. 43 (*d*)].

(*d*) " officer " includes a chairman, secretary, treasurer, member of Committee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society :

The Madras Act, quite unnecessarily adds president, vice-chairman and assistant secretary.

(*e*) " registered society " means a society registered or deemed to be registered under this Act :.

Burma has : " Co-operative Society " means a society registered under this Act.

(*f*) " Registrar " means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act : and

(*g*) " rules " means rules made under this Act.

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[1] The English Acts define Committee as the committee of management or other directing body of a society.

(*a*) *By-laws.*—Correspond to the articles of association of companies [*cf.* definition of articles—Indian Companies Act, sec. 2 (1)]. The by-laws, which include the objects (see notes to sec. 4) completely define and restrict the society's activities. The Act itself does not empower a society to make by-laws. It must have them before it is registered [sec. 8 (3)] and it may amend them (sec. 11). The Local Government may by rule under section 43 (*c*) empower a society to make by-laws. A by-law is 'a standing rule of a corporation or society, made for the regulation of its internal organisation and conduct; it is distinguished from a provision of its constitution in being more particular and more readily altered (Century Dictionary).

(*b*) *Committee.*—A committee is not prescribed by the Act. In Acts of other countries it is. For instance, the New York State Law provides that every such corporation shall be managed by a board of not less than five directors. The South African Act goes further and fixes the minimum at three, the quorum at not less than half the number and prescribes meeting at least once a month. In India, rules may be framed, if necessary.

(*c*) *Member.*—In the Indian Companies Act, a member is one who subscribes to the memorandum and who agrees to become a member, he must take not less than one share. [See notes to sections 5 and 12.] Members may be registered societies (section 6).

Madras has: "financing bank" means a registered society, the main object of which is to lend money to other registered societies.

Bombay by a curious oversight has the definition: "Society" means a society registered or deemed to be registered under this Act. The result is unfortunate as the Act, as here, proceeds to prescribe "societies which may be registered", and that the Registrar if satisfied may register the society and so on. Further, it ignores the very important point that unregistered Societies are subject to the Indian Companies Act.

Includes a person: according to section 3, clause 39, General Clauses Act (X of 1897) "person" shall include any Company or Association or body of individuals, whether incorporated or not.

In the original bill the second clause ran: "persons elected by the members for the time being," the substitution of the word "admitted" does not do away with the necessity of selection, election precedes admission [*cf.* 42 (*d*)].

"It is important that members should be eligible for admission by election only so as to secure that mutual confidence upon which successful co-operation must depend..... The selection must still be personal and made by the society; no person can claim admission under any automatic rule and the important principle that the new member must be accepted by the old ones or their representatives is maintained."[1]

As a matter of fact, this element of selection is not confined to Co-operative Societies. Even in the case of Companies, Directors may decline to register any transfer of shares, not being fully paid-up, to a person of whom they do not approve. They generally merely consider the question of the uncalled liability, but joint-stock banks usually provide in their articles for more strict election. In Co-operative Credit Societies, careful selection is a vital principle as it is the possible borrowers who are being selected. In stores societies dealing for cash only, it is less important. The importance of selection varies to a large extent with the liability of members and with the objects of the society. In a general supply (stores) society, selling only for cash, it is insignificant. The Indian Companies Act adds the words: "and whose name is entered in its register of members," and the entry in the register is prima facie proof of membership but (see sec. 25 and notes) this does not apply to Co-operative Societies; membership has to be directly proved. The English Act follows the Companies Act.

(*d*) *Officer* refers to those dealt with by rule under section 43 (*g*). It does not include an auditor.

For the sake of convenience clause 29, section 3 of the General Clauses Act may be repeated here:

Local Government.—Shall mean the person authorised by law to administer executive government in the part of

[1] Government of India Resolution.

British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner.

Registration.

3. The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province or any portion of it, and may appoint persons to assists such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act. The Registrar.

The last three and a half lines are new to the Act of 1912; and were unfortunately omitted from the Burma Act of 1927; generally speaking, the Registrar exercises over societies the power of a Court over Companies under the Indian Companies Act. The Burma Committee recommended that the Local Government should have restored to it the power embodied in the last three and a half lines.

Under this Act the Registrar is constituted the very foundation of the movement. It is left entirely to his discretion to register or to refuse to register a society (*cf.* section 9), and the by-laws and every amendment of them require his approval (*cf.* sections 9 and 11). Thus on him rests the responsibility of seeing that a society starts under conditions as favourable as he can make them. In order to ensure that wise rules are carefully observed he is given unlimited power of inspection and audit (*cf.* sections 17 and 35). He controls the power of a society to make loans to, and receive deposits from, a non-member [*cf.* sections 29 (1) and 30], and has a voice in the investment and disposal of its funds [*vide* sections 32 (1) *d* and 34]. Finally, he has full discretion, subject to the right of appeal to the Local Government or such Revenue Authority as it may nominate, to order the dissolution of a society (*cf.* section 39) and to appoint a liquidator to wind it up. These are extensive powers and in some quarters there is an inclination to object to them being centred in a government official. But it cannot reasonably be disputed that the control of the movement by official Registrars has been a success, and has not in any way tended to paralyse progress. Only one who devoted all his time to mastering the many problems that come up for solution could deal at all adequately with the duties of the post. Undoubtedly India has been saved many failures and many years' delay by the present system. The

officially controlled movement has so far reached only a fraction of the villages but where it has not penetrated co operation has not gained a footing[1] Nowhere have those who clamour for the elimination of official control proved their ability to do without it)

Registrars are not and are not intended to be merely registering officers, they are also expected to provide supervision assistance counsel and control Government alone was in a position to supply the knowledge and organisation necessary to start the work and Government alone is able by its association with the movement to create the outside confidence necessary to give it stability It is necessary that Government through its own and the societies staff should continue the co operative education of societies long after they are registered The fact that societies though primarily self contained and self governed are subject to supervision by Government officers has an important effect in attracting public confidence and the benefits thus accruing to the country at large fully justify the expenditure of public money on official supervision Perhaps in no direction has this been better illustrated than by the decline of deposits in joint stock banks and their increase in State supervised institutions

(The movement must in its essence be a popular one and nothing should be done to weaken the feeling among co operators that it is based upon self reliance and in dependence Government therefore in the best interests of the movement must not allow co operation in this country to become an official concern managed by State establishment (Government of India Resolution) The Registrar is primarily responsible for seeing that a new society is being formed on a sound basis he must not confine himself merely to seeing that the applications for registration satisfy the conditions of the Act and the Rules (Committee s Report)) Madras has embodied this in a rule (*cf* next section)

It is worth noting that Registrars need not necessarily be officials of Government and the practice is growing of appointing non official helpers as Honorary Assistant Registrars with certain powers of a Registrar

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[1] It is curious to find an English writer saying I agree that the farmer is much more likely to co operate when a state official goes round and tells him to do so than when his neighbour (who might possibly get the job of being the local secretary of the society) tries to be persuasive (Green The Awakening of England p 342)

In England the only qualification obligatory for a Registrar is that he be a barrister of not less than 12 years standing However, besides registering, he also prepares and circulates model forms of accounts, balance sheets, and valuations and collects and publishes information as to statistics useful to the societies All salaries and expenses are paid by the Treasury He is not necessarily versed in co operative principles and hence perhaps those lapses which Mr Wolff castigates him for In India, the Committee on Co operation place a heavy burden on the Registrar (para 192), he must be continually studying co operative literature, which is now most extensive, he must make himself acquainted with economic conditions and practices both throughout India and in his own province, he must know the principles and methods of joint-stock banking, and must examine the systems of developing thrift and inculcating co operation which have been tried in other countries He is also head of a teaching establishment and must devise effective means for impressing a real knowledge of co operation on the bulk of the population He has further to control a large staff to draft model by laws and rules to collect statistics and write reports, to advise Government on various subjects, and to keep in close touch with the higher finance of the movement as managed by Provincial Banks and Central Banks

Societies which may be registered

4. Subject to the provisions hereinafter contained a society which has as its object the promotion of the economic interest of its members in accordance with co operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability

Provided that unless the Local Government by general or special order otherwise directs—

(1) the liability of a society of which a member is a registered society shall be limited,

(2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no

member is a registered society, shall be unlimited

Burma has this proviso in a separate section 10, but in section 2 has "if its objects include" an amendment of very doubtful value

In amending the Act, it would be desirable to insert the word "primary" before "object" This has been done in the Madras Act In a society for the sale of milk the creation of such funds may be a secondary and even distant object but it may be advisable to keep liability limited Bombay has done this

Bombay further adds and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of all obligations of such a society Provided further that when the question whether the liability of a society is limited or unlimited has once been decided by the Registrar at the time of registration his decision shall be final Madras repeats the first three lines only, omitting the proviso

In the old Act section 7 the liability of rural societies was unlimited and of urban limited or unlimited

Object —The objects must be clearly and fully specified as they have to be approved before registration, they correspond to the memorandum of association of a company and they restrict the transactions of a society as it cannot have any other object than those specified Any act which is beyond the objects thus specified is *ultra vires* and void and a contract entered into beyond them is void as the members have only agreed to associate together and to undertake liability for the promotion of specified objects, the members of the Committee are personally liable for any loss the society may sustain by reason of acts done by them not warranted by the objects As the object must be the promotion of the economic interests of its members, a society must not serve non members and transaction with non members may be held *ultra vires* Thus a society established for co operative sale of produce cannot make loans unless this is specially mentioned as an additional object

Some Acts specify the objects for which a Co operative Society may be formed that of South Africa is an example, others define the objects in comparatively narrow terms

Economic interests are not defined but the preamble suggests thrift and self help In France, the object of

Agricultural Credit Societies " shall exclusively be that of facilitating or of guaranteeing operations affecting agriculture."

The supply of capital for productive purposes, education in the true uses of credit, combination to secure the fullest advantages in a world of competition, the elimination of middleman's profits are amongst the objects aimed at. The essential idea is the carrying on of business in common which may be—

(*i*) for credit;

(*ii*) for purchase of raw materials;

(*iii*) for sale of products (agricultural or industrial);

(*iv*) for production;

(*v*) for purchase wholesale for sale to members of food-stuffs and household requisites (e.g., stores);

(*vi*) for acquisition of implements for agriculture or industry;

(*vii*) for construction and acquisition of dwelling-houses (e.g., building societies).

An Indian Station Club is a Co-operative Society, whose object is the provision of recreation, games, reading, etc., for its members but not the promotion of economic interests. It is usually strictly co-operative in its constitution and rules. It is a good example of a Co-operative Society which cannot be registered under this Act but may be dealt with under the Companies Act.

Of its members.—A society is only concerned with the interests of its members and its activities cannot be affected by the interests of non-members. Dealing with non-members can only be undertaken when this furthers the interests of members. The Local Government (sec. 31) may prohibit or restrict such transactions, it cannot order them to be carried out.

These words " of its members " find a prominent place in every Act relating to co-operative societies.

Co-operative principles have already been discussed; any attempt at a precise definition of a Co-operative Society was intentionally avoided in the interests of elasticity and simplicity. The Act contains just the minimum conditions necessary to prevent abuse.

With the object of facilitating the operations.—Central Banks and Unions can only be established with the object of facilitating the operations of primary societies. Profit-making can be no part of their object. "The acquisition of gain" must be left to joint-stock companies. They were not recognised by the first Act and this section has been amended to include them.

(*i*) They must be established with the object of facilitating the operations of Co-operative Societies;

(*ii*) their liability must ordinarily be limited;

(*iii*) they are not subject to the restrictions imposed by section 5, so far as their members are societies;

(*iv*) they are not subject to the requirements of section 6 with regard to members, residence, and similarity of tribe, class or occupation;

where shares are held by individual persons, the latter are restricted by section 5 but not by section 6. Thus one society and one individual could form a Central Bank.

A Central Bank, in short, need not conform to general co-operative principles. It may be and usually is a joint-stock company, enjoying the privileges of registration under this Act on condition that it adheres strictly to its object. In the Companies Act, section 254, a joint-stock company is defined as a "Company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount.....and formed on the principle of having for its members the holders of those shares..... and no other persons."

It thus becomes exceedingly important to check any tendency to put profit-seeking for itself before the object of helping other societies. The following extract from a Provincial Report is an instance of the evil to be fought: The arrangement whereby it was agreed that village societies should deposit their surplus funds in the.....Central Bank has been discontinued as unprofitable to the Central Bank which had to pay 7 per cent. whereas it could get what it wanted on its own account at 6 per cent.

As already mentioned in discussing the question of thrift, a Central Bank must give preference to deposits from primary societies representing the savings of their members.

As the Central Banks hold in deposit the surplus funds of primary societies, it is essential that these latter should elect wholly or in part the Managing Committee of the Central Bank, as a safeguard against these funds being used in any speculative venture or in any manner calculated to injure their interests.

"*May be registered.*"—It must be registered under this or under the Companies Act. *Cf.* section 4, Companies Act: "no Company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a Company under this Act" (or other Act) and no similar Company of more than 20 persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company..... or by the individual members thereof unless it is registered under this Act (or other Act). These provisions apply to such associations until and unless they are registered under this Act (sec. 48).

This section of the Companies Act deserves to be more widely known. In Europe, the general legal view is that all associations are illegal, unless permitted by the law.

An unregistered society would not be a body corporate; it would be illegal; it could not sue or be sued; it could not be voluntarily wound up[1]; it could not enter into contracts; it could have no legal rights over property and every individual member would be liable to be sued by any or all of the creditors for the debts of the Society. It would not enjoy any of the privileges—exemption from Income-Tax, Stamp duty, Registration-fees, etc. Unregistered Co-operative Societies are common in Germany and are found elsewhere[2]: the members assume considerable risk in order to avoid restrictions as to accounts, audit, etc. Such societies cannot enforce their by-laws.[3]

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[1] The Court could order it to be wound up under Part IX of the Indian Companies Act.

[2] 'Owing largely to the imperfections of the Italian law, only a limited number of Co-operative and Friendly Societies and Village Banks have registered themselves. Application for registration has to be made to the local Court of Justice, and the vagueness of the law has allowed prejudiced judges to insist on the insertion of unreasonable conditions or to refuse registration on arbitrary grounds.' (Italy To-day, p. 195).

[3] The object of registration under this or the Companies Act is chiefly to facilitate business. If a man is to do business with 11 partners in Banking or 21 partners in Commerce, he must know who they are and where they live. So that if necessary he can sue them. On the other hand, the partners would find litigation very troublesome if they have all to be joined as plaintiffs or defendants. If the number of partners increases, litigation would become almost impossible, and credit would cease.

There is nothing in this Act to prevent a Co-operative Society from being registered under the Companies Act, and where the promoters do not wish to follow co-operative principles in their entirety or object to official control, it is preferable that they should register under the latter Act rather than seek exemption by the Local Government under sections 45 and 46. When such a society applies to be registered under this Act, it is an act of purely voluntary selection and the Registrar has the right to point out that they have an alternative course, if they do not fall in with his requirements. Madras insists, that, before registering a society, the Registrar shall satisfy himself that it has reasonable chances of success with reference to local conditions. If he refuses to register, he must record a brief statement of his reasons for such refusal and the applicants receive a copy free of cost. All orders of the Registrar are open to revision by Government, and an appeal lies against a refusal to register.

Limited may mean limited to the amount, if any, unpaid on the shares respectively held by the members, or limited to such amount as the members may respectively undertake to contribute to the assets of the society in the event of its being wound up (limited by guarantee). The liability, of course, is for the debts of the society in the event of its liquidation [*cf.* Burma Act, section 2 (*c*)]. The Madras Act says the members shall, on its liquidation, be jointly and severally liable for and in respect of all its obligations.

The sum for which individual members are liable must not be less than the share value; and the amount of liability attaching to each share must be fixed by the by-laws. A reduction of the amount of liability attaching to each share should only be effected after publishing a notice in the papers and informing creditors, because it is for the creditors' money that the liability exists. A company cannot reduce the liability on each share without reconstitution. It can, however, reduce the number of shares (and so the total liability). To any such reduction the sanction of the Court is necessary.

Liability of members.—In the German Act "all persons becoming members incur liability also for the engagements contracted previous to their entry" this is the ordinary company rule and it apparently applies in India. See sections 23 and 24 "debts as they existed at the time of his ceasing to be a member (or decease)." These obviously include all debts. In the Irish rule, however, each member is

declared liable only for the debts incurred and loans advanced during his membership. Such a rule may place a crushing penalty on the oldest members. In some Russian credit societies, liability is limited to twice the amount of credit opened to members.

In Swedish societies a member's borrowing rests on the area (not more than his actual land) for which he elects to enter the society; and his liability is similarly based. A man may own twenty acres, but "enter" for only ten.

Proviso (1).—The proposal that the Registrar should have a discretion in the matter was wisely dropped.

Non-agricultural societies with limited liability require special care as they show a tendency to forget true co-operative principles. The fifth conference (1911) expressed the opinion that such societies should be encouraged but that they should be confined to as small a scope as possible and that in all cases the recording of the purposes of the loan must be insisted upon. Further the Committee of the society must see that the loan is applied to the purpose for which it is given. Without this safeguard such societies were quite likely to lead to increased indebtedness.

The Committee on Co-operation thought that as a general principle, liability in non-agricultural credit societies should be limited only—

(1) when the clientele is fairly well-to-do;

(2) when owing to local conditions full mutual knowledge cannot so easily be secured among the members; and

(3) when the share capital is adequate to the business undertaken.

It is very important in such societies to limit dividends, to insist on punctual repayment and to fix maximum loans for each member: ordinary banking principles should be strictly adhered to.

Unlimited liability is of course the earlier and ordinary form of liability that prevails throughout all business by individuals and unregistered partnerships. It is universal except where specially replaced by limited liability under some law. Limited liability was allowed to Co-operative Societies in England in 1862, almost as soon as it was permitted to the ordinary commercial company.[1]

[1] Fay. Co-operation at Home and Abroad, pp. 353-354 (2nd Edn.). In Germany the law of 1867 prescribed unlimited liability for all societies; in 1889 limited liability was permitted.

Where a society is not a body corporate, as in an unregistered society, unlimited liability means that any or all the creditors may sue any single member for their debts. In a registered society, liability refers to the contributions which a liquidator may levy under section 42 (2) *b*. It is liability to contribute which can only be enforced upon the winding-up. An exception in favour of the Crown is embodied in section 44 whereby liability may be enforced without the society being wound up. In Germany, societies do not appear to be bodies corporate and any creditor may sue any member and leave him to recover from his society. Under the English Friendly Societies Act, also societies are not bodies corporate.

Unlimited liability is made legally obligatory in rural credit societies, as it is the cheapest means of securing the interests of depositors and so of providing funds for members. It is a practical necessity in a poor community, but it is found to possess so many advantages that, even apart from this, its retention is desirable.

It must be real and members must not be allowed to slip out of it [*cf.* secs. 14, 23, 24, 42 (2) *b*].

It must not be limited by any act of a single member. For instance, members should not be allowed to pledge their unlimited liability in more societies than one. The model rules of a Raiffeisen Society prescribe that persons who already belong to another credit association with unlimited liability may only acquire membership if they declare forthwith their withdrawal from such other society. This condition is usually present in all model by-laws issued in India.

Also members should not be permitted to encumber their property by mortgage, etc.; if this be done, proceedings should at once be taken to recover any outstanding loan, and to expel the member. The Committee on Co-operation (para. 4) did not think that unlimited liability carried with it any obligation against alienation. But if a member, having pledged his unlimited liability to his society, proceeds to encumber or dispose of his material possessions, what becomes of the security he offered to depositors?

The above does not refer to borrowing from a co-operative mortgage bank, but his borrowings from such a bank should be reported to his primary credit society.

The Local Government is given power to relax the rule of unlimited liability to meet special cases; if for instance

a local magnate, whose sympathy and assistance it is important to secure, desires to become a member but does not care to assume a liability which is wholly without limit, in such a case his liability may be limited to the amount of a guarantee. Such was the original intention of the Government of India but the first conference (1906) held that large land-owners can best assist the movement by financing societies and, while standing apart from participation in their management, by helping the managing body by advice as may be necessary and showing an interest in the societies' progress.

It would be not co-operation but charity, if a rich man joined the society solely to help his poorer fellows. Members, in joining, must be actuated by a desire to help themselves. The early confusion of ideas here and elsewhere is interesting.

Unlimited liability having been adopted to increase the security offered to outside depositors, the members must adopt certain measures to protect themselves against the risk involved. The first measure is to restrict membership to a small area so as to ensure close personal knowledge of one another's business, position and character [sec. 6 (*a*)].

The second is to secure close supervision over the employment of borrowed money. The third is publicity within the society as a member must know what he is liable for. The fourth is the steady creation of a reserve fund [*cf.* sec. 33 and rules under sec. 43 (*p*)] to serve as a buffer between the creditors and the members. The smaller the reserve fund, the greater is the real liability; but as the reserve fund grows, the liability declines.

The fifth is restriction on transfer (sec. 14) and on withdrawal (sec. 23).

The sixth is the fixing of a limit on their own liability (sec. 30). The members should every year agree upon a maximum sum, up to which their society may borrow and along with this they should fix a maximum credit for each member. If the Committee exceed these limits they are legally personally responsible for any loss the society may sustain.

By observing these precautions and by carefully confining loans to members selected for their honesty, the dangers involved in unlimited liability are reduced to a minimum.

In unlimited liability societies, the share does not represent the member's portion of the capital nor does it determine his liability. A member may take more than

one share to increase the stability and utility of the society and to encourage thrift. In pure co-operation no dividend is paid on shares in excess of the ordinary interest rate. Presumably, in determining contributions under section 42 (2) *b*, the liquidator would not be guided by the number of shares held by individual members.

Unlimited liability renders desirable the exclusion of women and minors. In the former case the value of their liability is extremely doubtful, in the latter case it does not legally exist.

Note the wording of proviso (2), no society should be allowed to acquire a share in a society with unlimited liability for obvious reasons of prudence. The Madras Act, by section 5, makes provision for a change in liability. The previous sanction of the Registrar is required and every member and creditor has to be notified in writing and given opportunity to withdraw shares, deposits or loans as the case may be (*cf.* Appendix III, p. 311).

The Indian Central Banking Enquiry Committee understood that the present Act does not provide for the registration of societies of an All-India character, like the Indian Provincial Co-operative Banks Association or the All-India Co-operative Institutes Association, operating over more than one province. They recommended that the Act should be amended to provide for such registration.

It is not easy to understand this recommendation. There is nothing in the Act to prohibit such registration, and the wording follows closely that of the Indian Companies Act under which associations operating all over India are freely registered.

Restrictions on interest of member of society with limited liability and a share-capital.

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(*a*) hold more than such portion of the share-capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules; or

(*b*) have or claim any interest in the shares of the society exceeding one thousand rupees.

The Burma Act prohibits registration of a society as limited by shares unless its by-laws prescribe these conditions.

The Bombay Act has :—" (*b*) have or claim any interest in the shares of the society exceeding three thousand rupees : provided that if the society is a housing society a member may have or claim an interest in the shares of the society not exceeding Rs. 10,000." Madras adheres to the old wording above.

Capital here means the funds contributed or guaranteed by shareholders or members.[1] *Share-capital* is commonly classed under three heads ; *authorised capital :* being the amount of share-capital which a society (or Company) is authorised by its by-laws (or articles) to raise ; *subscribed capital :* being the total value of the shares taken up by members, that is the sum which the existing shareholders have undertaken to pay up or the sum of their total liability ; and *paid-up capital :* being the amount of share capital actually paid up out of the sum (subscribed capital) which they have undertaken to pay. The difference between the subscribed capital and the paid-up capital represents the reserve liability of the members. In a society of limited liability, this represents the maximum sum which a liquidator can call up by way of contributions [*cf.* section 42 (2) *b*].

In limited liability societies, under German law, an additional share cannot be acquired till the last one taken has been fully paid up. Italy goes further and does not allow any unpaid liability at all.[2]

Under the Companies Act no subscriber of the memorandum is permitted to take less than one share and this should be applied to Co-operative Societies and the joint holding of a share should be forbidden.

The first condition is usually extended to unlimited liability societies by by-laws ; but in these societies it is the accepted rule in pure co-operation that no member should have more than one share—a rule not followed in India. It is a dangerous situation as more shares may mean more profits without more liability. This section does not apply to unions whether for banking, guarantee, or other objects. The principle is characteristic of Co-operative Societies and is designed to exclude the mere seeker after profits. He is further debarred by section 33 and rules under section 43 (*r*). Clause (*b*) restricts acquisition of rights by mortgage. *Cf.* section 14 which makes the transfer or charge of shares or interest subject to this maximum.

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[1] Findlay Shirras : Indian Finance and Banking, p. 406.

[2] Darling : Co-operation in Germany and Italy.

This restriction may be removed by general or special order of a Local Government passed under section 46 (*q.v.*) and the Committee on Co-operation considered that the statutory limit may be raised to some higher figure such as Rs. 5,000 or Rs. 7,500, where difficulty is experienced in raising sufficient share-capital for Central Banks but added that in such cases precautions should be taken to ensure that each shareholder should not be allowed more than one vote (*cf.* sec. 13].[1]

In the Industrial and Provident Societies Act and in most Acts of other countries relating to co-operative societies, a similar restriction on the amount of interest a member may hold is to be found.

In Italy, if a member by inheritance acquire more than the maximum limit of shares, he is not entitled to any share of profits on the excess number and must sell them. If he does not sell them then the society may sell the shares and hold the proceeds at the members' disposal. This condition is now finding a place in the model by-laws of Indian provinces.

Interest here (and in secs. 14, 20, 21 and 22) means not, of course, interest on capital but the whole stake of the member in the funds of the society.

Conditions of registration.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(*a*) reside in the same town or village or in the same group of villages ; or,

(*b*) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word " limited " shall be the last word in the name of every society with limited liability registered under this Act.

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[1] In some Central Banks in the Punjab, this restriction was relaxed, but this led to obvious disadvantages. For the Bhola Motor Owners Co-operative Society Ltd., Bakargunj, Bengal, the limit has been fixed at Rs. 5,000.

Burma adds after "limited" "or the vernacular equivalent"; and adds "wherever the name appears". Also *cf.* section 12 of the Burma Act.

Persons: section 3 (39) General Clauses Act (X of 1897) prescribes that "person" shall include any company or association or body of individuals, whether incorporated or not. In England it would seem that a corporation or a partnership could not be a member, and Bengal now by rule specially excludes a joint-stock company.

Cf. Indian Companies Act, any seven or more persons associated for any lawful purpose, may form a company. In England, Germany and South Africa, the minimum for a Co-operative Society is also seven. In New York State, Finland, etc., it is five.[1] Out of thirty-three state laws in America, four insist on 3 persons, eighteen require 5, four require 7, one 10, one 20, two 25 and three make no provision.

Clause (1) does not apply to unions or most Central Banks.

The House of Lords Committee recommended that the number of (primary) Banks combining to form a Central Bank should not be less than seven and this is the number which is prescribed by the Japanese law of 1921 for a federation or union of societies.

(*a*) *Cf.* section 4 (2) such a society, unless the majority of members are not agriculturists, must have unlimited liability and therefore a limited area (see p. 83). A non-credit society (e.g., stores) is not subject to unlimited liability or limited area.

Above the age of eighteen years.—This condition is prescribed at the time of registration but the provision made in section 4 (*b*) of the old Act for the maintenance of this qualification among members afterwards was not retained in

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[1] In Finland, for practical reasons it has been found necessary to prescribe for rural Banks that they must have at least fifteen members at the start, and if a Co-operative store is started, the majority of whose members are persons of small means, it is in most cases necessary to fix the minimum number of members at 200 to start with. (Co-operation in Finland, p. 71.)

In Quebec, 25 members are required in agricultural associations with limited liability. In Saskatchewan, 5 farmers are required for agricultural non-credit societies. The proportion of agriculturists must be 75 per cent. and no transfer of shares is allowed which would reduce the total number of agriculturists below that percentage. Roumania proposes seven for an agricultural co-operative society, co-operative producers' society or co-operative sale society, and at least twenty for other forms of co-operative societies.

the new Act The sixth conference considered that minors should not necessarily be debarred from becoming members when they were heirs of deceased members The Madras Act has " who have attained the age of majority "

Cf notes to sections 14, 22, 43 (*n* and *d*) In limited liability societies, the admission of minors must depend on whether the shares are fully paid up or not In the latter case the minor cannot be called to pay the reserve liability

In unlimited liability societies, there is no object in admitting minors as (1) they cannot incur liability, and (2) they cannot obtain loans except perhaps for necessaries The decision rests with the society and they would be well advised to exclude minors Subject to the provisions of section 22, the questions of the relations of a society to the minor heirs of deceased members, is left to the operation of the ordinary law

Reside —The proposal to add " or holds property in " has been frequently discussed and has met with much support but was negatived Bombay and Madras have not adopted this in framing their Acts Residence is essential in order to secure full mutual knowledge The fourth conference (1909) favoured a proviso " provided that an agriculturist who resides in another village but whose principal holding is in the village where the Co operative Credit Society is situated, should not be debarred from joining the society," but this was not adopted

The field of the society should be sufficiently restricted to allow members to be mutually acquainted and to be in a position to exercise an effective mutual control The essential principle is that societies should ordinarily consist of members so closely in touch with one another that they are willing to be, and can be both in name and in fact, jointly responsible (Committee's Report) [1]

It is one of the principles of co operation that societies should be open to all fully qualified [*cf* notes to sec 43 (*q*)], in order to prevent them from becoming unwieldy the area

[1] The main characteristic of this basic unit or local rural co operative credit society is that the area from which the members are recruited is so restricted that all members or at least the officers may know personally every person admitted to membership Indeed this is the first essential for not o herwise can be obtained that full and regular attendance at meetings and that personal acquaintanceship making for friendly relations and mutual confidence which create and maintain the true spirit of co operation (Herrick p 461)

should be limited This clause indicates that the type considered most suitable is that of Raiffeisen and not of Schulze

Clause 1 (*b*) —"Same class," e g, soldiers of one regiment

Mr Wolff apparently objects to this he considers that a mixture of classes and wants makes for strength, but experience teaches that homogeneity of membership makes for success

Clause 2 —Follows the Companies Act See notes to section 4

This includes societies limited by guarantee and unions. A society would not be registered by the name of a Company

There are thus three conditions for a credit society failure to retain ten members may lead to cancellation of registration (sec 40) but breach of conditions (*a*) and (*b*) above does not involve cancellation unless this is provided for in the by-laws (see notes to sec 40) Apparently by laws defining the area or the tribe should be declared compulsory under section 43 (*c*)

Power of Registrar to decide certain questions

7. When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste, or occupation, the question shall be decided by the Registrar, whose decision shall be final

Instead of ' for the purposes of this Act," Bombay has " for the purpose of the formation, or registration or continuance of a society under this Act "

Burma has (section 13) " The Registrar shall decide all questions as to whether any application conforms to the requirements of section 12 and whether the objects of the society are in accordance with section 3 "

It is interesting to note that the term " agriculturist " is not defined and that the Local Government was not given power to define it by any rule under section 43 In the Punjab the Land Alienation Act of 1900 defined the expression but the Registrar would not be bound by that

Agriculturist: one occupied in cultivating the ground (Century Dictionary).

Application for registration.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed—

(*a*) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1); and

(*b*) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

Burma adds after "society" in line two of clause (3) "which shall state the objects of the society."

See notes under section 43 (*b*).

Cf. Indian Companies Act, section 9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

"Sign" with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions. [General Clauses Act, sec. 3, cl. 52.]

The words "duly authorised" in clause (2) (*b*) suggest that a copy of the resolution of the society authorising the person to sign should be produced.

The application must be in writing and the by-laws (which correspond to the Articles of Association) must be recorded.

In order to overcome suspicion at the beginning, it is essential to start with a well-considered set of by-laws preferably with one that has already worked successfully. Alteration of the by-laws at the outset is sure to retard the growth of confidence, especially in societies of unlimited liability (*cf.* Ransom). In the New York State law relating to co-operative agricultural, dairy and horticultural associations, the by-laws need not be submitted before registration, but there must be a general meeting within thirty days after incorporation to adopt by-laws regulating the conduct and management of the association.

In the Act itself no by-law is prescribed, but both in England and Germany the by-laws submitted with the application must deal with certain points [see notes to sec. 43 (*c*)]. In India it is obvious that the by-laws must prescribe the area and tribe, etc. [sec. 6 (1) *a* and *b*] and the address (sec. 15).

In England and Germany the names of the Committee must be submitted with the application.

The Act does not confer upon a society power to make by-laws, it must draft its by-laws prior to registration (clause 3 above) and may amend these (sec. 11). As the Registrar must approve before registration he is practically given power to impose model by-laws, in addition to any prescribed by section 43 (*c*). It is worth noting that (differing from the Companies Act) a member is not necessarily entered as such in the register of members, that signatures to the memorandum need not be attested and that the appearance of his name in the register is not prima facie evidence that he is a member. The matter is left to rules under section 43 (*d*). It is also to be noted that the ten signatories become members of the society on registration (*cf.* definition of "member") and form a noteworthy exception to the general rule that members must be elected.

Clause 3.—Mr. Brabrook, Chief Registrar in England, writes that: "it is not far from the truth to say that the legislature had been learning from experience that the best service it could render to these societies was to pass their rules under the eye of a person skilled in the art of expressing in clear and simple language the legal conditions under

which the members of associations were to be allowed to combine for beneficial purposes."[1]

The last words of section 9 make it clear that both society and by-laws require registration, but while there may be a registry of by-laws apart from the registry of the society, the registry of the society must be of a society with by-laws. The Registrar ought to endorse the by-laws in token of registration. Each society should have a copy of its by-laws so endorsed.

The by-laws are binding on a society as well as on the members, they form the contract between the society and its members and that contract can only be altered in the mode prescribed by the Act or rules. As between the society and its members a course of dealing at variance with the rules, for whatever length of time it may be pursued and acquiesced in, is of no validity whatever.[2]

Madras empowers the Registrar, before registering a society, to make such alterations in the draft by-laws submitted as he may deem advisable, provided that the consent of the applicants to such alterations is obtained.

tration. **9.** If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to the Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

Burma has for from "he may": "he shall, unless for reasons given to the applicants he sees fit to refuse, register the society." In practice, the difference may be small, but so long as the Registrar carries the responsibilities described on pages 81 and 82 and so long as the movement is to a considerable extent dependent on State aid, the Registrar must be given full discretion to register or not.

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[1] This submission of rules to a special authority for approval is almost everywhere insisted upon, e.g., Austria—*cf.* also Italy—Monographs II, p. 129 'as the members are, as a rule, but little versed in the laws of business, the law, to afford them protection, requires that societies shall notify their formation to a public notary in the presence of two witnesses and the Court must verify the legality of their formation.' The South African Act follows the Companies Act and appends model regulations and prescribes that these shall form part of the regulations of the society except in so far as the regulations registered are inconsistent with or exclude or modify them.

[2] Wurtzburg: Law relating to Building Societies (4th Edn.), p. 165.

The Registrar of Companies has no such discretion, but presumably he would not register a Company whose articles were contrary to the Act *Cf* Indian Companies Act, section 24 (1) In South Africa, the registrar submits the application to the minister of agriculture who may in his discretion veto the registration of any society, but if within a period of one month he shall not exercise his right of veto, the Registrar shall register[1] A society does not acquire privileges until it is registered (i e, *re* stamp duty, registration, income tax etc)

From this point onwards the phrase "registered society" is used and the Act only applies to these The first effect of registration is to remove the societies from the operations of the Indian Companies Act

See note to section 43 (2) (*c*) Although not mentioned the usual restriction may be presumed that the name must not be identical with that of an existing society

There is no appeal provided for from an order refusing to register But this may be provided for by rule, the Bombay and Madras Acts allows an appeal to government within two months of the date of the communication of the order

In the English Act it is provided that the Registrar shall issue an acknowledgment of registry This is necessary (see sec 10) and should be prescribed by rule under section 43 (*b*)

Evidence of registration

10. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled

Cf Companies Act, section 24 (1) where, however, the certificate is "given" by the Registrar "Duly registered" apparently means that section 9 has been complied within its entirety so that the certificate is conclusive evidence that the provisions of the Act have been duly complied with Thus the two Acts agree

For effects of registration, see section 18

Such a certificate would suffice against a claim to income tax A certificate bearing the seal or stamp of

[1] The application goes to the minister because he grants extensive financial assistance

the central office shall be received in evidence without further proof, and every document purporting to be signed by the Registrar . . . . . shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature (Friendly Societies Act).

The certificate is a conclusive answer to any objection relating to registration and at once enables a society to enter into contracts. It is prima facie evidence that all the provisions of the Act have been duly complied with; it is conclusive evidence of a society's corporate existence.

This section follows the Friendly Societies and Industrial and Provident Societies Acts.

The certificate would also serve to exclude evidence that a society was not really co-operative or was not what it claimed to be. It would thus serve to deprive Civil Courts of jurisdiction in certain cases and confine malcontents to resort to the registrar under sections 35 and 36.

Amendment of the by-laws of a registered society.

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

Burma inserts after "amendment" in the first line:—whether by way of cancellation, addition or alteration.

Bombay inserts after "valid":—until approved by the resolution of a general meeting and registered. . . . . .

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment.

Bombay omits "if he thinks fit."

Burma makes it obligatory (shall) to register "provided that the Registrar may for reasons given to the society refuse to register the amendment."

(3) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

In the case of Companies an alteration of the memorandum of association requires confirmation by the Court here it requires approval of the Registrar The memorandum of a Co operative Society must conform to section 4 Alteration of the by laws of a Company can be carried out by special resolution Local Governments usually have made rules requiring a majority at a general meeting at which a certain proportion (two thirds) of the members must be present Manitoba insists upon this two thirds majority as well as upon the approval of the Registrar A Co operative Society could not alter its by laws so as to conflict with the provisions of the Act or with co operative principles The whole section is taken from the Friendly Societies Act Clause 2 merely reproduces section 9

Amendment ordinarily means the act of making better, correction improvement but in this sense it means any alteration or change either by way of correction or addition (Century Dictionary) The English Act says it includes a new rule and a resolution rescinding a rule It may even amount to a complete substitution of an entire set of rules for the existing set and bearing at the beginning the words "all previous rules rescinded In New York State law on co operative productive societies "the power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares, but such amount shall not be diminished below the amount of paid up capital at the time the amendment is adopted" Great care is required in seeing that this section is properly complied with No by laws can be acted upon unless they have been registered and any action in accordance with unregistered amendments might be held to be illegal In an English ruling the presiding judge stated that these societies cannot depart from their established rules or neglect to comply with the Act in the mode of altering or repealing them, without exposing their property to danger and themselves to great expense loss and inconvenience"

The original rules hold good until amendments have been registered The provision as to appeals from a refusal to register a society would presumably apply to a refusal to register an amendment of a by law

Bombay allows an appeal to Government from any order or decision of or sanctioned by the Registrar This appears to allow an appeal from an order registering an amendment The Madras Act has In case of refusal,

an appeal shall lie to the Local Government within two months from the date of the issue of the order of refusal by registered post.

The Act prescribes no period within which an amendment shall be tendered for registration. In South Africa, the Act fixes a limit of one month. The minister of agriculture can refuse to allow the alteration.

Rights and liabilities of members.

Member not to exercise rights till due payment made.

12. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

Burma has:—"No person shall exercise. . . . ."

Cf. Model articles, Indian Companies Act "No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid."

The Madras Act allows the persons who have signed the application for registration to elect a Committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider desirable. This Committee is to cease to function as soon as the members of the society have elected a Committee in accordance with its by-laws.

Rights and liabilities of members are dealt with in various sections of the Act, in rules under the Act, and in the by-laws.

A member must be elected by the Committee [sec. 43 (*d*)] before he can be admitted (*cf.* definition); thereupon after payment of any prescribed fees, share instalment, etc., he becomes entitled to exercise the rights of a member, including all the benefits of the society. He may attend general meetings[1] [sec. 43 (*f*) rules] and vote thereat (sec. 13) including voting for the Committee [sec. 43 (*g*)]; he may,

[1] The power of the members is supreme but it may be exercised only at meetings regularly assembled, at which a majority prevails (Herrick, p. 247). Hence the great importance of the right of members to insist on a general meeting being summoned.

in collaboration with the number of members prescribed in the by-laws, insist on the Committee calling a general meeting; he is entitled to obtain a loan for specified purposes approved by the Committee if his security is good and subject to his maximum credit; he is entitled to deposit his savings in the society [sec. 43 (*e*)] if the society can employ the money usefully; his share or interest is exempt from attachment (sec. 21); he may transfer this share or interest subject to certain conditions (sec. 14) though he still remains liable for two years (sec. 23); he can nominate a person to whom payment shall be made on his death [sec. 43 (*n*)]. He is entitled to a share of the profits when these are distributed [sec. 43 (*r*)] and is exempt from income-tax thereon (sec. 28). He is entitled to a copy of the rules or by-laws (on payment) and also to a copy of the annual return and balance-sheet (free). He may inspect the books at all reasonable hours at the society's office, except the deposit and loan (?) account of any other member.[1] He has a right with others to call on the Registrar to hold an inquiry (sec. 35) and (sec. 39) to apply for dissolution. He can appeal against the order for dissolution [sec. 39 (2)]; on his death the disposal of his share (sec. 21) is regulated and his liability (sec. 24) is limited to one year. He may institute proceedings against officers of the society for offences committed. Finally he has the right to withdraw if he disagrees with the decision of the majority. In unlimited liability societies this is a very important right indeed as it enables a member to withdraw before a liability is incurred to which he objects (*cf.* sec. 23). He is not entitled to a share of the reserve fund (sec. 33), nor to sell his share to any one not approved by the Committee.

These rights are protected by the rule of one man one vote and by the prohibition of proxy voting, so that a member who attends a general meeting can be certain of a hearing from those who are going to vote on the point under discussion.

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[1] According to the writers of the book on the English Acts, published for the Co-operative Union, Manchester, this privilege of unlimited inspection had become much abused, and was often used not so much for the general good of a society as from self-interested motives, and for the satisfaction of a member's personal vanity. This power of individual inspection is now limited to a member's own account, and the book containing the names of the members. Wherever there is real cause for enquiry, it only needs ten members to apply to the Registrar for one. The Registrar will then appoint a competent person to make a thorough enquiry and report.

In British Columbia (Co-operative Associations Act, 1920), in associations for dealing with agricultural products, no member shall be entitled to vote at any general meeting or be appointed a director of the Association unless he has sold his main crop or produce of the year through the Association, or undertakes in writing to do so during the ensuing year or has received consent of the directors to dispose of this crop or produce otherwise.

This section says nothing about liabilities, and a member cannot escape from these by withholding any payment prescribed. One who merely signs the application [secs. 2 (*c*) and 8] incurs all liabilities for two years (sec. 23) even if he withdraws at once. He must assume joint liability and becomes unconditionally bound by all the rules [sec. 43 (*d*) notes]; he is liable to expulsion [sec. 43 (*m*)] and may be called upon to contribute to the assets of the society [sec. 42 (2) (*b*)] even though debts were incurred prior to his admission. His chief protection is his right to obtain all the information required concerning the solvency and good management of the society.

Under the by-laws, a certain proportion of members may insist on a general meeting being called. The Madras Act includes this; the Committee may at any time call a general meeting and shall call one when required in writing by the Registrar or the financing bank or from such number of members as may be specified in the by-laws. In case of default, the Registrar has power to call the meeting.

Votes of members.

13. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

The Bombay Act says: No member of any society shall have more than one vote in its affairs, provided that in the case of an equality of votes the chairman shall have a casting vote. Madras repeat this for registered societies and omits clause (2).

The Burma Act says :—Each member of a Co-operative Society shall have one vote only as a member in the affairs of the society. Provided that a Co-operative Society which is a member of any other Co-operative Society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power.

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society any one of its members.

The Bombay and Madras Acts omit the words " as its proxy ".

Madras adds : " not disqualified for such appointment " after " members ".

See notes to sections 12, 43 (*f*). Where members desire an enquiry by the Registrar (sec. 35) or dissolution of the society (sec. 39), the one man one vote principle is prescribed for all societies.

Clause 1 is, of course, the condition of equitable association. A society is an association of individuals with equitable participation and control, hence one man one vote. This, as the Committee on Co-operation recommend, should be the rule in all societies including those with limited liability such as Central Banks. In unlimited liability societies liability is equal and the Act insists on control being equal. The second clause is a concession to the joint-stock idea ; in view of the Committee's opinion it is to be hoped that by-laws allowing more than one vote to any member will not in future be approved by Registrars of those provinces which still retain clause (2). Mr. Wolff is very clear on this point : " whatever be the value of the shares it must be not those which determine the voting power of members in the bank. The bank is to be co-operative ; that means it is to be a union, not of capitals, but of persons : and whatever be the holding of each member the voting power must be equal as amongst them." It is this rule of equal votes which distinguishes co-operation from co-partnership. It is an absolutely essential element in any true co-operation and is regarded by nearly all authorities

as a fundamental principle.[1] Any hardship that might appear to be involved is in reality limited by the restriction in section 5 on the amount of shares which any individual may hold. If this restriction is removed under section 46, in case of Central Banks, the strict adherence to this principle becomes additionally important. It may be noted that even in a joint-stock company there must be a show of hands before there can be a poll, on a show of hands one man has one vote and there are no proxies allowed. It is only when a poll is taken that each member has one vote for each share held by him and proxies are then admitted. The capitalist has no place in co-operation and it is entirely opposed to co-operative principles that the extent of a man's control should depend on the capital he holds in the society.

Voting by proxy is not provided for in the Act except in the case of corporations or societies which may be members. This follows the English Acts. The general rule is that there can be no voting by proxy unless this is specifically allowed by rule or by-law. In Germany, it is forbidden (except in the case of corporations and women) but under the English Act (which is here followed) it may be provided for in the by-laws. The by-laws must be clear and must be strictly adhered to as action taken on a vote secured by irregular proxies might be declared illegal.

The New York State law on productive co-operative societies allows an absent member to send in a written vote provided he shall have been previously notified, in writing, of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to his written vote. The Wisconsin State law has the same provision. This is not voting by proxy but voting in absence. One advantage of disallowing free voting by proxy, is that the rule of one man one vote is maintained.

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[1] It does not appear necessary to labour the point. The evidence as to the existing practice was set forth in an article by me, 'One man one vote' published in the *Bombay Co-operative Quarterly*. No co-operator defends or advocates any other principle, except that in some cases votes may vary with the amount of transactions with the society. The newer acts of different countries all prescribe one member one vote, and nearly all model by-laws in India insist upon it.

The most recent adherents are the Canadian provinces of Saskatchewan, Manitoba and Quebec and, now Bombay, which prescribe that each member may only have one vote and may not vote by proxy. The English Co-operative Union introduced a Bill into Parliament in 1924, prescribing, amongst other things, that the word 'Co-operative' shall be limited to societies which provided for one member one vote in its rules.

If a member could bring proxies he would have more than one vote.

Sir F. Nicholson writing of the German prohibition of proxies says: Members cannot exercise their power of voting by proxy. The refusal to admit proxies is deliberately entered so as to bring the members themselves to meetings and get them to take a lively and personal interest in the society and its conduct, and to prevent a few persons from carrying their personal views by means of lightly and ignorantly given proxies. It is a very valuable co-operative principle especially where societies are small as in the Raiffeisen societies. Mr. Cahill agrees: By prohibiting voting by proxy, he writes, the law aims at securing the actual presence of members and maintaining in this way an essential characteristic of a Co-operative Society as a combination of persons as distinct from a mere union of capital. In Italy also, voting by proxy is forbidden except in cases of lawful impediment.

Miss Webb writes: In all distributive societies in England the rule of one member one vote is in practice, but unless exercised by ballot—as is sometimes allowed in the election of committees—a member can only exercise his power by attending and voting at meetings of the society. It is therefore counted the duty of every member to attend the meetings and take part in the government of his society and in a few of the older societies a fine is inflicted upon members absenting themselves from the general meeting without good cause.

The fourth conference of Registrars wished to have "no proxies shall be allowed" inserted in this section and applied to all societies.

Clause 3 merely allows an exception to the general rule that no person shall act as a proxy unless he is entitled on his own behalf to be present and vote at the meeting. It would obviously be inconvenient if the only delegate a primary society could send to the Central Bank was a shareholder in the latter Bank. If permitted, the proxy should be in writing; it is apparently exempt from the one anna stamp-duty. If considered necessary, the by-laws should provide for its deposit with the society before the meeting. A Bombay Provincial Conference desired that a society should be able to appoint as its proxy a member of another society.

In large societies, there is a tendency to appoint representatives to look after the interests of absent members. The distinction is a fine one, but it is clear that where membership is 500 and over it should be possible to replace the general meeting by a delegate meeting with all the powers of the former.[1]

Restrictions on transfer of share or interest.

14. (1) The transfer or charge of the share or interest of a member in the capital of a registered society, shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(*a*) he has held such share or interest for not less than one year; and

(*b*) the transfer or charge is made to the society or to a member of the society.

Bombay and Burma apply this to societies of limited liability too, but Madras adheres to the old wording. It, however, omits " or charge " in clause (1). Bombay adds " or property " after " capital " and at the end of (*b*) adds :— or to a person whose application for membership has been accepted by the society.

See section 5 and notes thereunder, note on unlimited liability, section 4.

" *Interest* " here means personal possession or right of control or participation in ownership, the legal concern of a person in the society, or the right of enjoyment of advantages (*cf.* Century Dictionary).

It is the right, title or claim to a share in the society or in some of the uses or benefits pertaining to the society.

In a company, shares are freely transferable as of right unless regulated or restricted by the articles. There may for instance (*cf.* model articles) be a rule that the Directors may decline to register any transfer of shares, not being fully paid-up shares, to a person of whom they do not

[1] Egger: The Co-operative Movement and Co-operative Law: *International Labour Review*, 1925.

approve. The Directors may thus pay regard to the reserve liability which might become valueless if the shares passed into the hands of paupers and minors. In an unlimited liability society, the shares do not apparently influence the liability.

In partnership shares are not transferable, but the partners may agree as to a redistribution. In a Co-operative Society the selection of members by qualifications and election is all-important; and, where the possession of a share is a condition of membership, the transfer of such a share must be as carefully guarded as the admission of members.[1] As the financial security depends on the liability of the members, it is necessary to restrain rapid changes among those liable. A depositor would never know whether his deposit was safe or not if members changed frequently. The United Provinces have a rule under section 43 (1) that the purchasing member must be approved for that purpose by the Committee of the society.

In a limited liability society transfer to a minor must be restricted by rule under section 43 (*d*), *cf.* sections 6, 22 and notes.

In an unlimited liability society the member is presumably over 18 years of age [see sec. 43 (*d*)], or, as in Madras, "has attained the age of majority".

The transfer of shares is disclosed in the register of members which has to be maintained up to date [sec. 25 and notes and rule under sec. 43 (*n*)] but this register is not prima facie evidence of the actual transfer but only of its date.

The retiring member continues liable for contributions for two years (sec. 23).

This pronounced restriction on transfer of all shares is characteristic of co-operative and similar societies which are not *public* companies. In Belgium, the shares are non-transferable; in France and Italy they are not transferable except to members and with the consent of the society. The New York State law on productive co-operative societies has: "no stock shall be transferred without the written consent of the corporation (i.e., society) endorsed on the certificate of stock. The corporation shall have the first right to purchase at par any stock of a shareholder offered for transfer or the stock of any deceased or retiring stockholder." The Californian law adds: "nor shall a purchaser

[1] The legal pandit points out, correctly enough, that the society must admit the new member *before* the transfer is effective.

at execution-sale or any other person who may succeed by operation of law or otherwise to the property interest of a member, be entitled to membership, or become a member of the association by virtue of such transfer."[1] All limited liability societies would be well advised to create a "share transfer fund" by voting a portion of the annual profits to this purpose. There is no objection to a society holding a number of its own shares in its undivided profits (other than the legal reserve). By this means transferable shares are made withdrawable so far as the holder is concerned, as the latter can sell to the transfer fund instead of having to wait for an individual purchaser. In a joint-stock company, the right to sell or transfer the share is incident to the ownership, and cannot be controlled by the company (if fully paid-up), although the company may reserve the option to buy the share whenever a member desires to sell.[2] The absence of a provision like section 14 (*b*) from the Companies Act, necessitates a special law for Co-operative Societies, as in America and elsewhere the control of Co-operative Societies registered under Company law has often passed into the hands of business rivals.[3]

The United Provinces has rules [see under section 43 (1)] regarding transfer of shares; one of which prohibits a Central Bank from buying its own shares except by way of formal reduction of subscribed capital. This seems to rule out the share transfer fund and is probably due to some misunderstanding. The capital of the bank is not reduced by withholding profits from distribution in order to hold its own shares.

Duties of registered societies.[4]

Address of societies.

15. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

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[1] Powell, p. 47.

[2] Powell, p. 43.

[3] Powell, p. 44.

[4] It is not an uncommon feature of some co-operative laws to impose on the society the duty of submitting periodical reports to a public authority. In India, this is included in the rules.

The Bombay and Burma Acts add —within 30 days of such change Madras omits them

Cf section 72, Indian Companies Act and section 24, Friendly Societies Act

(1) Every Company shall have a registered office to which all communications and notices may be addressed

(2) Notice in writing of the situation of the registered office and of any change therein, shall be filed with the Registrar, who shall record the same

As the address has originally to be given in the application [or ought to be, sec 43 (*b*)] only changes need be notified

The registered address of course fixes the jurisdiction of the court [rule under sec 43 (*l*), sec 42, cls 4 and 5, etc], and becomes important in the case of regimental societies, and Government of India clerks (who move from Delhi to Simla)

The object of the address is that all communications may be addressed to it, it need not be the place of meeting and the place of meeting may be changed without notice being sent to the Registrar

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society

Copy of Act rules and by laws to be open to inspection

Burma includes here also the register of members

Any member of a Company can claim a copy of the memorandum and articles on payment of a fee and the copies filed with the Registrar are open to inspection on payment

Every member is entitled to obtain all information required concerning the solvency and good management of the society (Irish by law) The Friendly Societies Act prescribes that every registered society shall deliver to every person on demand, on payment of a sum not exceeding one shilling, a copy of the rules of the society

It is to be noted that the rules and by laws must be open to non members This, of course, has special importance to depositors and other creditors A credit society should also expose in a public place a six monthly balance sheet

[*cf.* note sec. 43 (*h*)]. It must be remembered that Co-operative Societies are societies for the public good and hence the public have a right to know what are their rules and objects so that the advisability of joining may be considered [see notes to sec. 43 (*q*)].

Failure to comply with this section is an offence in England.

The right to inspect seems to include the right to take copies (Fuller).

Audit.

17. (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

Bombay adds: "the verification of the cash balances" to which Madras adds "and securities".

Burma has "verification of the existence of."

(3) The Registrar, the Collector, or any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transaction and working of the society as the person making such inspection[1] may require.

Bombay says free access, and adds: shall be allowed to verify its cash balances and securities. The directors, manager, and other officers of the society shall furnish to the Registrar or other person appointed to audit the accounts of a society all such information as to its transactions and working as the Registrar or such person may require. Madras includes cash and other properties belonging to or in the custody of the society; and it makes every member liable to furnish any information required.

Bombay has a clause (4): The Registrar and every other person appointed to audit the accounts of a society

[1] The words 'or audit' should be inserted here.

shall have power when necessary (*i*) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs, or (*ii*) to require the production of any book or document relating to the affairs of any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities. Madras also gives the auditor power to summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof. For Burma law see section 30 in Appendix. It throws the responsibility for audit on to the society. The power of access in clause (3) is confined to the auditor.

Collector means the Chief Officer in charge of the revenue administration of a district.[1]

It does not include a subordinate of the collector, and the latter cannot now depute a subordinate to inspect the society.

Most countries, by law, requires societies to submit their accounts to audit or inspection by some public authority. The original idea is to protect the members against the misconduct or incompetence of the officers, but undoubtedly the great value of a proper audit lies in the increased credit of societies with outsiders and the increased confidence of members in their organisation. Audit, in short, is for the benefit of the members.[2]

By the Companies Act, sections 144 and 145, every company must at its annual general meeting appoint an auditor for the next year and he must make a report during that year. If a company fails to do this the directors cannot appoint an auditor behind the backs of the shareholders

[1] General Clauses Act, see clause 3 (10).

[2] *Cf.* Smith Gordon, Co-operation for Farmers, p. 55 :—The stability of a society's business is largely affected by the manner in which its accounts are kept, but in a very large number of farmers' societies, the keeping of the books is absolutely elementary and sometimes non-existent. This difficulty has been dealt with in all countries where the movement is far advanced by insistence upon frequent audits conducted either under government supervision or by some properly authorised central body and in all cases by duly qualified persons. In America, where no such system exists, the result is seen in the frequent and unexpected failure of the societies. It is absolutely necessary that some central body should have power to supervise the auditing of farmers' co-operative societies.

but must apply to the Local Government The burden of securing a proper audit of the accounts is thus placed on the company The Friendly Societies Act also imposes this duty on the society and allows the audit to be conducted by two members, who, of course, must not be office-bearers[1], but as Mr Wolff says we have in the co operative world everywhere come round to the conclusion that, except in very small societies, the work of one skilled accountant is worth a good deal more than that of the two unskilled members[2] The tendency in England is to insist upon a stricter observance of the provision of the Act regarding audit

The audit notes should not be treated as confidential Usually the central banks receive copies and the Madras Committee recommended that these should be given free of charge and the central bank should have facilities for making such further inquiry as it considered necessary to safeguard its own financial interests

Under the first Act, no charge was to be made in respect of any audit made under this section, but now rules may be framed under section 43 (*b*) regarding the levy of fees Where societies are affiliated to a Central Federation or Provincial Union, this should possess power of control over auditors If a society is prepared to employ and pay a chartered accountant or other professionally trained auditor, the Registrar would accept his audit as sufficient under this section

It will be noticed that no explanation is given of the action which the legislature intended to be taken Section 26 of the Friendly Societies Act says that the auditors shall examine the annual return and verify it with the accounts and vouchers relating thereto, and shall either sign the annual return as found by them to be correct, duly vouched and in accordance with law, or specially report to the society in what respects they find it incorrect, unvouched or not in accordance with law

The manual on Co operative Auditing of the English Co-operative Union says Audit gives confidence to the members The auditor should direct analysis so as to reveal the points of weakness His duty does not admit of any

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[1] The New York State law on agricultural dairying and horticultural societies prescribes an auditing Committee of three members who shall not be directors officers agents or employees of the association which shall at least once in each quarter make an examination of its records and property and report the results in writing to the association

[2] Co operation in India, p 171

interference with the method of management of a society or the control of the officials and employees; he should confine himself to the records of the business rather than to the actual working. He should examine the rules with a view to satisfying himself that the working of the society is in accordance therewith. He should use his position and power by advice given to the Committee, and if necessary to the general meeting, with a view to a sound business policy being adopted.[1]

Audit may be defined as such an examination of the books, accounts and vouchers of a business, as shall enable the auditor to satisfy himself whether or not the balance-sheet is properly drawn up, so as to exhibit a true and correct view of the state of the affairs of the business, according to the best of his information and the explanations given to him and as shown by the books; and if not, in what respects it is untrue or incorrect.[2]

The auditor must, by the exercise of reasonable skill and diligence, satisfy himself that the books contain a proper record of the transactions entered into. This involves an examination, more or less complete, of the whole of the transactions of the business, and the manner in which they are recorded. The auditor should examine the by-laws of the society, and ascertain that they are duly carried out. The Burma Committee recommended that he should make specific mention of all cases where a loan has been misapplied or where the borrower has disposed of the profits without first repaying the society.

The two principal reasons for which audit is instituted are the detection of fraud and the detection of errors. The prevention of fraud and errors depends upon the deterrent and moral effect of the audit. Frauds may be divided into two classes: defalcations, involving misappropriation either of money or goods; and the fraudulent manipulation of accounts, not involving defalcation. The opportunities of committing fraud by defalcation are so frequent and the methods necessary to conceal it so simple that no business is safe from the risk. Misappropriation may be concealed by the inclusion of fictitious payments and by the omission of receipts. The latter class is much the more difficult to detect. The amount of detailed checking which the auditor

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[1] Tetlow, p. 19.

[2] For this definition and what follows see Spicer and Pegler's 'Practical Auditing'.

must perform before he can satisfy himself that no fraud exists, will depend to a great extent on the check exercised by the managing committee. He must test the transactions exhaustively, and, should he find anything irregular, he must then make a complete audit.

In regard to the detection of errors, it must be remembered that what at first sight appear to be merely clerical errors are often ultimately found to be due to fraudulent manipulation, and it is therefore important for the auditor carefully to examine the cause of any error, however slight it may appear to be. Errors of omission are very difficult to detect, and may not be discovered until the accounts of previous years are compared. An error of commission arises when a transaction is incorrectly recorded, either wholly or partially. The error may not be discovered until the transaction is vouched or otherwise checked.

Clerical errors are due to posting an item to a wrong account, or to an incorrect posting. Where an item is posted to a wrong member, the balance remains correct and only careful check will lead to the detection of this kind of mistake. Where an item is posted to the credit side instead of the debit side or vice versa, the result will be a discrepancy of double the amount.

In companies where the most important result of the audit is to disclose the profit available for dividend, there are many errors which are unimportant because they do not affect the net profit which may be divided amongst the shareholders. But in a Co-operative Society, profits have not the same predominating influence ; while correct accounting is absolutely necessary if the society is to survive. A joint-stock company cannot be described as unsuccessful if the shareholders lose no money by it. A Co-operative Society can be described as unsuccessful, if the members lose no money by it yet fail to gain any advantage from it. It is hardly an exaggeration to say that proper audit is more important in a Co-operative Society than in a joint-stock company. It is not every member who has time to examine the accounts, yet it is every member who is responsible for any loss incurred. The Committee are elected in general meeting, but once elected, their powers are very complete. Even the most honest or well-meaning member of the Committee may be liable to err. The members must have an independent opinion on the management of their Committee. This does not arise from mistrust, but from ordinary business caution. It is easily understood that, among friends, there

may be some hesitation on insisting on an independent audit, audit, though primarily intended for the members, is also absolutely necessary for the protection of the members of the Committee against charges which cannot be supported Regarded from every point of view, audit is absolutely essential to the successful, as well as to the smooth, administration of every society

In England refusal by an officer to furnish information required is an offence under the Act In India it is left to the Penal Code [1] except in Bombay where sections 60 and 61 deal with offences, in Burma where a penal clause is added to this section and in Madras where section 52 covers the case

Privileges of registered societies

Societies to be bodies corporate

18. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution

Madras for the last three words substitutes for which it was constituted

Cf Indian Companies Act, section 23, clause 2 runs "the subscribers shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, showing perpetual succession, etc, common seal"

As the society is a body corporate, it is unnecessary to prescribe a Committee with legal power to represent it

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[1] The need of a penalty in case of contumacy is illustrated by Sir T W Russell's evidence before the House of Lords Committee on the Thrift and Credits Bill to the effect that several credit banks in Ireland refused to let the auditor audit them There should be imposed on the officers the duty to show the books and a penalty should be provided Madras has now a rule empowering the Registrar or anyone authorised by him under this section to require the production of any books accounts, documents securities and the cash The summons is to be addressed to the person in possession of or responsible for the custody of the books etc and may be tendered to him or to some adult member of his family, or left at his place of abode or affixed to it or sent by registered post Bombay has inserted the essential portion in a new clause (4) to section 17 of this Act

In Germany where societies are not bodies corporate "the Co-operative Society shall be represented legally and otherwise by the Committee of management."

The corporate body ceases to exist when registration is cancelled (sec. 41). The effect of incorporation is to protect individual members from suits by creditors; no legal proceedings can lie against a member of a society individually in respect of an obligation of the society; the society has to be sued and in case of default it is the society and not the individual members which goes into liquidation (see sec. 42 and notes). The principles relating to bodies corporate are the same both as regards companies under the Companies Act and incorporated societies under the Co-operative Societies Act. As the Full Bench of the Patna High Court have pointed out,[1] the members are not liable to have executions issued against them in respect of judgments obtained against the society. The members can only be reached individually by the process of winding-up.....whether the liability of a society is limited or unlimited can only affect the members when they come to contribute to the liabilities of the society in the winding-up. An exception to this in favour of the Crown is embodied in section 44. If the society is not a corporate body, the liability of each member is really unlimited and anyone may be sued by a creditor. In the case of a corporate body, the members are only liable to contribute towards any deficiency in the assets in the course of liquidation. This is styled "unlimited contributory liability" (*cf.* Cahill). The Agricultural Societies in Ireland, registered under the Friendly Societies Act, are not corporate bodies, but English societies registered under the Industrial and Provident Societies Act are. The result is the societies under the former Act "shall have one or more trustees" in whom property is vested.

Section 18 above follows section 21, Industrial and Provident Societies Act, 1893, except that the latter imposes limited liability. German societies do not appear to be corporate bodies and hence individual members can be sued by creditors under their unlimited liability.

Privileges are conferred on the condition that the societies adhere to their principles, they may be withdrawn (sec. 46) if they depart therefrom. Accordingly they must be jealously guarded by a strict adherence to principles.

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[1] Harihar Prasad, Gaya Central Co-operative Bank *v.* Bansi Missir and others.—*I. L. R.*, XI, Patna, p. 174.

Prior claim of society

19 Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(*a*) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan

(*b*) in respect of the supply of cattle fodder for cattle agricultural or industrial implements or machinery or raw materials for manufacture or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied or purchased in whole or in part from any such loan or on any articles manufactured from raw materials so supplied or purchased

Madras adds a clause (2) the priority created by sub section (*i*) in favour of a registered society shall be available against any claim of the Government from a loan granted under the Land Improvements Loans Act 1883 after the grant of the loan by the society

The claim referred to is one in a judicial proceeding the section does not confer any summary power of realisation on a society The Friendly Societies Act gives a registered society priority in the case of the death or bankruptcy of an officer in respect of any money or property of the society held by him on demand by the society the heirs trustees etc must pay the money or deliver the property in preference to any other debt or claim against the estate of the officer

The Calcutta High Court has ruled that an outside decree holder can attach and sell a crop or other property covered by this section in priority to a society unless the society also obtains a decree in its favour or holds a charge

under section 20; the Committee favoured an amendment to this section making the lien a charge on the property in respect of which the loan was granted (para. 70); and all Local Governments seem to be agreed that the "lien" should be converted into a "charge" so that a society may have a prior claim without obtaining a decree.

Bombay has enacted that these claims shall be a first charge in section 24 (see Appendix). The charge has not proved of much practical value and it is not clear how the charge could be followed up if the produce, cattle, etc., were sold to non-members. Burma omits this section altogether as the prior claim was of little value and was never enforced, and the effect of altering this to a "first charge" was doubtful. The English Agricultural Credits Act, 1928, provides for charges in favour of banks approved by the Minister; it is described as an agricultural charge; section 11 enacts that if, with intent to defraud, any farmer who has created an agricultural charge fails to comply with the obligations imposed or removes or suffers to be removed from his holding the property subject to the charge he shall be liable to penal servitude for three years. The Committee on Co-operation in Burma recommended legislation of this nature for India. The recommendation of the Madras Committee in favour of a charge may therefore be considered obsolete, and it is interesting to note that the new Act does not alter the old wording and so does not adopt Bombay's lead.

The exact meaning of this section is not clear. Already, under section 60, Civil Procedure Code, where a judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of section 61, are not liable to attachment. The section gives no prior claim to land purchased or redeemed from money lent by the society. The law of the Philippines constitutes these loans a lien ranking in priority before every other claim, mortgages alone excepted. In Austria, credit societies have a lien on all the moveables of a borrowing member which precedes that of any other of his creditors, after he has been once admitted to membership.[1] In Italy, a borrower is prohibited

[1] Herrick, p. 376.

from delivering any goods (over which the society has a prior claim) to the buyer, until the debt incurred to the credit institution has been discharged To do so is a criminal offence [1]

In Belgium, loans to agriculturists may be secured by a special privilege, chargeable upon the produce, stock, furniture, etc, of the farm Sir F Nicholson says the privilege is granted to all who lend to agriculturists, whether bank or private lender, in order to ensure the granting of credit to agriculture on easy terms by giving lenders special facilities for recovering their dues In England, a farmer could give a bill of sale over his chattels In Italy, institutions granting agricultural credit may secure a special privilege in guarantee of their loans upon the crops of the year, upon the produce of farms stored in the farm house and buildings and upon the stock, implements, and furniture of the farm

Charge and set-off in respect of shares or interest of member

20. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

A company has a lien on the shares of its members In the German Act " the sum paid up with respect to shares of members may not while membership lasts be accepted as security in its business with members Members cannot have the value of their share taken into account in the settlement of accounts with the society " (Cahill) Industrial and Provident Societies Act, section 23 (2), " a registered society shall have a lien on the shares of any member for any debt due to it by him and may set off any sum credited to the member thereon in or towards the payment of such debt "

The words " set off " are not used in a strictly legal sense, but more in a business sense, as indicating that the society may deduct or write off the amount of a member's debt from the sum credited as paid on his share, and

[1] International Bulletin, December 1916, p 82

therefore, so long as the society is carrying on business, it may *bona fide* avail itself of this section (Fuller)

The model articles of a company give a company a lien on every share (not fully paid up) and on dividends thereon for all moneys due on the share, and the company may sell the share to enforce its lien without resort to the Court

It would be quite absurd for a member to be able to set off his share in the society against the society's claim against him for money owed The shares are part of the capital of the society and are security for the creditors and not for the debtors Unfortunately such a set off was freely permitted in Burma with regrettable results

Interest—See note to section 5

Bonus—A sum given or paid over and above what is required to be paid or is regularly payable (Century Dictionary)

The Madras Act adds " or deceased " and " or the estate of a deceased member " after " past " and " past member " and so places the interest of a deceased member and any sums due to his estate on a footing similar to that of present and past members

Shares or interest not liable to attachment

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909 nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest

Bombay includes in this exception the share or interest in any provident fund established under section 41 of the local Act

The word " capital " here does not refer to the whole funds of the society, or the working capital, as otherwise a member's share or interest in his deposit would not be liable to attachment It apparently refers to the capital owned by the members in their corporate capacity, i e , the society s owned capital The Government of India expressly refrained from exempting deposits from attachment as

they did not think that thrift should be encouraged wholesale at the expense of the legitimate creditor.[1] Thus the deposits, dividends and interest on deposits of loans are not exempt. As one of the chief objects is to encourage thrift, this special privilege was accorded to protect savings in the form of shares. It was originally proposed to exempt deposits up to Rs. 100 placed with a society for a year, but this was omitted from the bill.

In the German Act a creditor of a member may (under restrictions) attach the interest of the member and then give notice of the member's withdrawal so as to secure payment of the interest attached!

Note that this exemption only applies to shares of a registered society, so that on dissolution as soon as the registration is cancelled (secs. 39 and 40) the shares would become liable to attachment if no liquidator were appointed to take charge of the assets.

For the meaning of the word "interest" in this section, see note to section 5.

Transfer of interest on death of member.

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws:

Provided that—

(*i*) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the

[1] But under section 60, Civil Procedure Code, exemption from attachment is granted to all compulsory deposits or other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment.

value of the share or interest of the deceased member ascertained as afore said,

(*ii*) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person

Bombay allows the society to transfer within a period of one year the share or interest to the nominee if duly admitted a member of the society, if there is no nominee the transfer may be made to the heir or legal representative if duly elected a member of the society, or it may pay a sum representing the value of such member's share or interest The nominee, heir or legal representative may require payment within one year

For clause (2) the Bombay Act has —" a society shall, unless prevented by an order of a competent court, pay " For the Burma sections (19 and 20) see Appendix They are far from being an improvement on the original They set up a curious undefined distinction between transfer, payment and disposal, and contain the unfortunate mistake of making it obligatory on a society with limited liability to pay the value of deceased member's shares to the nominee This provision requiring the repayment of share capital even by Central Banks holding deposits is expressly opposed to

section 19 (1). Industrial and Provident Societies Act which rules: No registered society which has any withdrawable share capital shall carry on the business of banking. The Burma Committee recommended the addition of a proviso to the effect that nothing in these sections should be read as authorising any society with limited liability holding deposits or loans to reduce its paid-up capital.

Interest.—See note to section 5.

This section follows sections 56, 57 and 58, Friendly Societies Act. There, however, the same procedure is extended to cases of a member becoming insane.

Rules may be made under section 43 (*n*), under which the matter is further discussed. It should be noted that only one person may be nominated but Bombay has "person or persons nominated." In England, an amendment allowing more nominees than one was carried for the Industrial and Provident Societies Act but not for the Friendly Societies Act.

Under section 6, members at the time of registration must be over 18 years of age, but the maintenance of this qualification is not provided for. Presumably a minor member cannot make a nomination, and a minor son of a deceased member need not be accepted as a member; the society is not bound to accept the heir (major or minor) or any nominee as a member. The general rule is that the heirs of a deceased member are not recognised as members until one of them is accepted by the Committee as representative of the deceased; if no such representative is elected, the heirs are entitled to repayment of the value of the share or interest if the liability of the society is unlimited. In this case section 24 gives the society ample protection, as presumably the value of the share returned is but a small fraction of the total assets of the estate available in case of need. In a society of limited liability, the value of the share is either the whole (fully paid-up) or a large fraction (partly paid-up) of the liability and it would obviously be inconvenient to part with it. Accordingly, in a society with limited liability, the value of the share of a deceased member cannot be paid back (*cf.* Proceedings of Ninth Bengal Conference). Yet, as mentioned above, the Burma Act makes this obligatory.

In joint-stock companies only executors or administrators are recognised by the Company as entitled to the

share, but the Directors have the same right to decline registration of transfer as they have in ordinary cases.

The Government of India have explained that the question of the relations of a society to the minor heirs of deceased members is, subject to this section, left to the operations of the ordinary law. Thus, if there is a liability on the share held by a minor, the society should take action against the legal representatives, executors or administrator, or may apply to the court for the appointment of a guardian and failing satisfaction it may force the estate into bankruptcy and so obtain a due proportion of the assets. It may apply to have the estate administered by the Court. If the member dies insolvent, the society may prove for the value of the uncalled portion of the share.

The period of one month in proviso (*ii*) might suitably be extended if any difficulty is actually experienced. Bombay allows one year.

The value of a share is not necessarily the nominal value, it does not include anything on account of the reserve fund (which is indivisible) but is apparently liable to deduction for loss incurred by the society. The value of the share may be ascertained from the last annual balance-sheet. The by-laws of Indian societies usually prescribe that the "value of the share shall in no case be more than the sum received by the society in payment thereof."

Clause 3 protects the society from litigation. Claimants must sue the nominee without joining the society as a party. *Cf.* Friendly Societies Act: the next-of-kin or lawful representative of the deceased member shall have remedy for recovery of the money, so paid, against the person who has received that money.

If the nominee dies, the Committee can take action as if there were no person nominated. The Committee would, of course, accept as legal representative anyone holding a succession certificate, where there was no nominee. Where there was a nominee, the Committee could presumably pay the nominee and leave the certificate holder to deal with him.

Refusal to pay the share or interest to the person nominated is an offence in England.

The Act does not provide any corresponding summary procedure for disposing of the deposit of a non-member who dies. Section 24 of the Burma Act applies the Government Savings Banks Act to such cases.

23. The liability of a past member for the debt of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member. Liability of past member.

This section is intended to protect creditors by restricting a member from shuffling off his liability and by making liable for debts one who has enjoyed benefits. It applies to joint-stock companies; section 156 of the Companies Act provides that a past member is liable to contribute on winding-up unless he ceased to be a member for one year or upwards before the commencement of the winding-up. He is not liable to contribute in respect of any debt or liability contracted after he ceased to be a member and is not called upon unless it appears to the Court that the existing members are unable to satisfy the contributions required. In the case of limited liability societies the contribution [sec. 42 (2) (*b*)] is limited to the sum uncalled on the shares and in certain cases to dividends received.

The debts referred to are debts to third parties and the expenses of winding-up, and the period of two years applies to those only. It does not curtail limitation in respect to sums owed by past members to existing societies. It would appear that no call can be made on a past member except under section 42 (2) (*b*). The rule is a fair and reasonable one. Mr. Wolff writes that, by strict right, the outgoing member is liable in respect of every liability incurred during his membership without limit of time. The fixing of a period within which a past member can be called upon to contribute is a matter of convenience only. In France members are not free from their responsibility until after the settlement of engagements contracted by the society before their withdrawal. In Belgium the liability continues for five years, in Greece for three years, in Italy for two years. In England it only applies to those who ceased to be members within one year prior to the commencement of winding-up. The past member cannot seek to liquidate his liability by promoting the dissolution of the society [*cf.* sec. 39 (1) which refers only to members].

Bengal has, in view of this section, framed a rule that no past member of a society with unlimited liability shall be eligible for membership of another such society except with the special permission of the Registrar. By a proviso to section 26 (2) of the Burma Act a past member was not to

be liable to contribute in respect of any debts of the society which could be satisfied by contributions from present members. This clearly enables unscrupulous members to throw the whole burden on to the richer ones by withdrawing before them. The Burma Committee pointed out the injustice.

As they existed at the time.—This may include debts contracted before the member joined, as in the case of ordinary companies. In Germany and Greece this is specifically provided for; a member on joining assumes liability for all debts existing at the time he joined, but in the Irish rules liability is limited to debts contracted during the period of membership. This seems to be unworkable as it is the deficiency of assets which has to be made good. The English Act provides that no individual, society or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member. The wording of the above section clearly includes this meaning. In order to define the liability German societies assume that membership ceases from the end of the financial year and so makes the annual balance-sheet the basis for the calculation of the debts as they existed at the time.

The South African Act contains the sensible provision that the liability of a past member ceases in all respects as soon as the financial statements of the society signed by the auditor disclose a credit balance in favour of the society.

Apparently a past member is bound by any alteration of the rules carried out subsequent to his withdrawal which may enhance his liability, subject, of course, to the proviso "as they existed at the time." This may seem startling, but it merely means that while a member has the right to withdraw at the moment a society proposes to incur a liability to which he objects, he does not thereby escape liability for his share in any measure the society may deem it advisable to take to meet responsibilities incurred while he was yet a member.

Past member is a person who has legally been a member and has ceased to be such by forfeiture, cancellation, surrender, or transfer of his shares (Companies Act) but not, apparently by death. The *date on which he ceased* to be a member would be proved from the register of members [sec. 25 (*b*)]. This provision should tend to make societies very cautious in granting loans for periods longer than two years as liability for loss on longer term loans could be avoided.

Madras has replaced "at the time" by "on the date". It has also applied this section to estates of deceased members and so increased the period from one year to two.

This section does not limit the period of liability of a withdrawing or past member for the debt of a member for whom he has stood surety. His liability as surety is a separate contract altogether from his liability as member.

Liability of the estates of deceased members.

24. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as they existed at the time of his decease.

See notes to section 23.

Also see notes under section 22, which deals with the case where the account is in favour of the member. The date of decease would have to be independently proved unless it were entered in the register of members [sec. 25 (*b*)]. Under the by-laws membership ceases at death in the case of societies with unlimited liability, so the register should supply evidence of the date.

The heirs or representatives of a deceased member cannot promote the dissolution of a society in order to liquidate their liability [sec. 39 (1)].

This section seems to refer only to contributions fixed by the liquidator [sec. 42 (2) (*b*)] or to a levy by the society to cover bad debts. But, by a curious omission, the reference in section 42 (2) (*b*) is to members and past members only, and not to the estates of deceased members. Once payment of the deceased member's share or interest is made to the nominee, the society must have resort to the heirs, executors or administrators of the estate, presumably by Civil Suit.

In Greece the period of liability is three years and the Madras Committee recommended extension to two years, which has now been incorporated in the new Act (*cf.* notes to section 23).

Register of members.

25. Any register or list of members or shares kept by any registered society shall be prima facie evidence of any of the following particulars entered therein :—

(*a*) the date at which the name of any person was entered in such register or list as a member ;

(*b*) the date at which any such person ceased to be a member

Cf section 40, Indian Companies Act Note that the register is not prima facie evidence of the names, addresses, occupations of members and number of shares held The register in fact must be supplemented by independent evidence to prove that a person named therein is a member This register, from the legal aspect, is one of the most important documents a corporate body maintains It discloses the list of persons liable It is accordingly compulsory under most Acts and should have been made obligatory here The Bombay Act requires every society to keep open to inspection a register of its members (see Appendix) It must be kept up to date to ensure the satisfactory application of sections 23, 24 and 42 (*b*), it must record the effect of transfers (sec 14) and, of course must, contain the dates of the deaths of members (as membership ceases on death) Its maintenance should be made compulsory by rule under section 43 (*k*) and there should be a rule under section 43 (*g*) imposing responsibility upon the Committee *Cf* German Act The Committee must maintain a list of members and keep it up to date This register must always be open to inspection by members A copy has to be sent to the Registrar every year at whose office, presumably, it is open to inspection The register might suitably have been included in section 16 [see notes to sec 43 (1)]

Proof of entries in societies books

26. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible

For the Bombay section, see Appendix

This almost word for word follows section 4 Bankers' Books Evidence Act (XVIII of 1891) The books include ledger, day books, cash books account books, and all other books used in the ordinary business of a bank

Section 5 of the Act runs: no officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book, the contents of which can be proved under this Act or to appear as a witness to prove the matters . . . . . therein recorded unless by order of the Court or a judge (of a High Court) made for special cause. The Court under section 6 may give liberty to a party to inspect the books.

Burma enacts this as section 33 (2) but confines it to "such Co-operative Societies as the Local Government by general or special order may direct." Madras enacts this for no officer or liquidator of a registered society and no officer in whose office the books of a registered society are deposited after liquidation. The object of extending the exemption to books after liquidation is not quite clear.

Book.—See notes to section 43 (*h*). To be a book used in the ordinary business of a bank (or as here expressed, regularly kept in the course of business) it need not be in use every day; it is sufficient if it be a book kept by the banker for reference if necessary. In litigation to which the bank is not a party, there is power, for special cause, to order the production of bank books, the content of which could be proved under the Bankers' Books Evidence Act. It would seem, however, that, short of some recalcitrancy on the part of the banker, no such order should be made.[1] Unfortunately Courts are inclined to ignore this section of the law.

Certified.—See notes to section 43 (*j*).

To the same extent as the original entry.—*Cf.* section 34, Evidence Act: Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to enquire but such statements shall not alone be sufficient evidence to charge any person with liability.

The following sections of the Evidence Act are important in this connection. Section 130: No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee, ...unless he has agreed in writing to produce them .....Section 65: Secondary evidence may be given

[1] Paget: Law of Banking.

of the existence, condition or contents of a document in the following cases :—

(*f*) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence. In case (*f*) a certified copy of the document but no other kind of secondary evidence is admissible.

In dealing with publicity, it has been shown that deposit accounts, and perhaps loan accounts also, should not be open to inspection even by members much less by the public, and the above provisions protect these accounts from being called into Court at the request of any malcontent. The whole of a society's books cannot be called into Court as they contain accounts of persons entirely unconnected with the case. For the books which may be open to inspection, see notes to section 43 (1).

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

27. Nothing in section 17, sub-section (1), clauses (*b*) and (*c*), of the Indian Registration Act, 1908, shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immoveable property ; or

(2) any debenture[1] issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or

[1] Debenture is a writing acknowledging a debt and, specifically, an instrument for the repayment of money lent, e.g., an obligation of a corporation issued in a form convenient to be bought and sold as investment (Century Dictionary). In ordinary business it is an acknowledgment of a debt with a date for repayment, which can be bought and sold in open market. It may be a simple debenture carrying no charge on the assets, or a mortgage debenture carrying either a fixed or a floating charge on some or all of the assets of the corporation issuing it.

part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or

(3) any endorsement upon or transfer of any debenture issued by any such society.

This exemption was not granted under the Act of 1904

Section 17 (1) The following documents shall be registered if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :—

(*b*) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property,

(*c*) non testamentary instruments which acknowledge the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest

Power to exempt from income-tax stamp-duty and registration-fees

28. (1) The Governor General in Council by notification in the *Gazette of India*, may, in the case of any registered society or class of registered societies, remit the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits,

(Note —The Burma Act, being a local Act, omits this clause The notification below refers to societies registered under this Act however)

(2) The Local Government, by notification in the local official Gazette, may in the case of any registered society, or class of registered societies, remit

(*a*) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable ;

(*b*) any fee payable under the law of registration for the time being in force.[1]

The Burma Act omits clause (*i*) and also repeals the whole Act of 1912. The Bombay Act retains the clause.

In sub-section (2) (*a*) the Madras Act after "instruments" in the seventh line adds : "or decisions, awards or orders of the Registrar or arbitrators under this Act."

Finance Department (Central Revenues) Notification. Income-tax. Simla, the 25th August, 1925. R. Dis. No. 291-I. T. 25.—In exercise of the powers conferred by section 60 of the Indian Income-tax Act (XI of 1922), and in supersession of the notifications of the Government of India in the Finance Department No. 681-F., dated the 28th December, 1912, and No. 718-F., dated the 8th March, 1922, the Governor-General in Council is pleased to direct that the following class of income shall be exempt from the tax payable under the said Act, namely :—

The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), or the dividends or other payments received by the members of any such society on account of profits.

By notification, Income-tax—25th June, 1927, No. 26 : the following words are inserted after "Co-operative Societies Act, 1912 (II of 1912)"—"the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925) or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927)."

This notification consists of two distinct parts. The first relates to the profits. Co-operators in England have

[1] This section was amended by the Devolution Act (XXXVIII of 1920).

always maintained that there is no such thing in their transactions as profits in the commercial sense of the word. They allow a fair interest to capital and regard the remainder of the surplus as the result of over-charging their members for services rendered, and they return this surplus by way of dividend on transactions or a bonus on wages. The Treasury finally admitted the argument and Parliament has ratified this. But steps have been taken to prevent abuse. Co-operators argue that their sole aim is the public good and accordingly the public should not be excluded from participation. Co-operators must not make profit from non-members and at the same time debar them from membership. The section (24) of the Industrial and Provident Societies Act accordingly runs: A registered society shall not be chargeable under schedules C and D of the Income-Tax Acts unless it sells to persons not members thereof and the number of shares of the society is limited either by its rules or its practice. These provisions were inserted at the instance of private traders to ensure that a privileged society did not compete with them for the custom of non-members. Where the holding of a share is a condition of membership, it follows that a society must not place restrictions on the number of its shares. The society must be prepared to admit as members all who deal with it so that they may join in the proportionate return of any surplus made by the society. [Hence, the need of rules under sec. 43 (*p*), (*q*) and (*r*)].

The second part of the notification exempting dividends or other payments received by the members on account of profits seems to be a pure act of grace on the part of Government. The movement, however, deals almost entirely with persons of limited means whose income is not likely to be assessable so that the cost to Government must be trifling. In England such profits are liable to assessment. The Government of India did not intend that exemption should be permanent. It was feared that a general exemption of Co-operative Societies from Government dues might lead to the establishment of money-lending businesses under this guise; it was accordingly confined to societies which submitted to registration and power was taken under section 46 to withdraw this exemption from any registered society.

The exemption does not extend to interest on deposits but the society must not give to Income-Tax assessors any details of its depositors.

Interest on securities held by Co-operative Societies is not exempt from income-tax if it is within the taxable limit (sec. 32-C, Civil Account Code). In England such interest is exempt.

The Madras Central Urban Bank seems to have contested this but the *High Court* (O. P. 202--1928) held that the Bank had to pay income-tax on interest on securities.

The old notification referred to the old Income-Tax Act and so could not serve to exempt societies from Super-Tax; the new notification exempts societies from the tax payable under the new Act, thus including Super-Tax in the exemption.

Income-Tax on securities is usually deducted at the source, so that many societies entitled to exemption, actually pay the tax. Certificates of exemption from deduction at the source can be obtained from the Income-Tax Officers.

The society is in a strong position, for, as the profits belong to the members, an attempt to levy tax would be defeated by an adjustment of prices (of goods sold) or interest (on loans) which would destroy the profit and leave no taxable surplus and the members would retain all the income they obtain at present[1] . . . . also as 95 per cent. of the members (in England) have no taxable income they could recover any tax deducted. Profit is the result of a bargain between buyer and seller, here buyer and seller are the same.[2]

(*b*) *Stamp-duty.*—By notification No. 2781-F., dated 23rd October, 1919 (Finance Department—Separate Revenue —Stamp), the Governor-General in Council has remitted the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of any Co-operative Society for the time being registered or deemed to be registered under this Act, or instruments executed by an officer or member of any such society and relating to the business of the society (other than cheques of individual members drawn against their current accounts with co-operative banks) are respectively chargeable.

Government of India, Finance Department (Central Revenues), notification No. 6-Stamps, dated 25th October, 1930. No. 6.—In exercise of the powers conferred by clause (*a*) of section 9 of the Indian Stamp Act, 1899

[1] Tetlow: Co-operative Auditing, p. 8.
[2] *Ibid.*, p. 8.

(II of 1899), and in supersession of the notifications of the Government of India in the Finance Department, No. 940-F., dated 22nd June, 1916, No. 80-F., dated 15th January, 1917, No. 1245-F., dated 16th May, 1919, No. 3183-F., dated 17th December, 1919, No. 4-Stamps, dated 2nd June, 1928, and No. 4-Stamps, dated 10th May, 1930, the Governor-General in Council is pleased to remit the duty chargeable under Article 12 of Schedule I of the said Act on the decisions and awards of the Registrar of Co-operative Societies for the Central Provinces and the awards of arbitrators in all disputes in which Co-operative Societies in British India are parties.

The exemptions do not cover receipts by non-members for interest, etc., paid on deposits in the society or bonds for loans illegally given to non-members. Nor do they apply to a bond given by a member and signed by a non-member as surety. It applies to the one-anna duty on proxies.

Thus as explained by the Registrar, Bihar and Orissa :— Cheques or receipts given by a member depositor for withdrawals from his fixed or savings bank deposits are exempt from stamp-duty whether the payment is received by himself in cash or by transfer to his own account in the same bank or in any other bank, or to the account of another depositor or co-operative society or endorsed in favour of a non-member. The above exemption does not extend to a non-member depositor except to this extent that when the payment is received by a non-member by transfer to his own account in the same bank, no receipt stamp will be necessary.

When a co-operative society issues an unembossed cheque in favour of a member or a non-member no stamp need be affixed on the cheque for endorsement, negotiation or encashment. The payee will also not be required to pay any stamp-duty.

When an individual member is granted a loan by a Co-operative Society exceeding Rs. 20, the bond or the receipt relating to it need not be stamped.

Similar exemptions are granted in other countries.

In England the exemption is confined to Co-operative Societies, such as those of agricultural credit, which have a rule prohibiting any division of profits amongst their members.

(c) *Registration.*—The Government of India and Local Governments have sanctioned remission of all fees payable by or on behalf of any registered Co-operative Societies

and all fees payable in respect of any instrument executed by any officer or member of such a society and relating to the business thereof. The Committee on Co-operation have recommended that where these fees would otherwise form part of the remuneration of the registering officers these latter should receive compensation for this loss of income.

In addition to the privileges above mentioned, Government has in sections 18 and 48 bestowed upon registered societies the benefits of incorporation and exempted them from the many fees levied on corporations under the Indian Companies Act. This is a very substantial privilege and taken in conjunction with the others, it has the effect of laying upon societies the responsibility of adhering strictly to principles. The whole idea of the movement is service for the mutual benefit without profit and it is because profit-making is not an object of societies that Government can remit various dues without unduly favouring them against companies and private traders. It becomes very important then that societies should not compete with these latter for the custom of non-members. They have a right to insist that transactions with non-members should be prohibited (*cf.* secs. 29, 30 and 31). As the movement spreads to other business than credit, the need for restraint will increase. Co-operation stands for fair play all round and for a specially privileged society to compete with a private trader, paying all legal taxes, for the profits derived from custom of non-members would not be fair play at all. Privileges involve duties.[1]

As Mr. Brabrook points out, these privileges are actual endowments by the State. They afford added reason for State control over the disposal of profit and dividend.

In some countries further concessions are granted. In some parts of Italy agricultural banks are entitled to gratuitous legal assistance (Monographs, II, p. 131). In Greece Co-operative Societies enjoy free postal and telegraph facilities for their correspondence with the public authorities. In Finland and Austria all cereals for the army used to be purchased from Co-operative Societies. In Hungary the department of agriculture gives to co-operative wheat storehouses aid to the extent of five-sixths of the expenses of

[1] In most countries the law recognises that exemption from taxation and similar privileges, given on the ground that a co-operative body is a non-profit-making institution, can only be allowed in so far as no business is done with non-members and the share list is always open [Co-operation for Farmers. Smith Gordon, p. 76].

building and initial establishment (Monograph, II, p 83) In Connecticut, U S A, mortgages on real estate are free from both state and local taxes, "an arrangement which inures to the general advantage of borrowers" (American Evidence, p 15)

In Japan, Co operative Societies enjoy the privilege of exemption from the tax on business transactions, and from the income tax, as well as from the registration tax Government also gives facilities to societies which are willing to undertake contracts, the army contracts for the supply of grain, etc

Roumania exempts from postage correspondence between Co operative Societies It gives them favoured treatment in respect of undertakings for working the State forests or fishing in State owned waters Similarly they receive preference in all concessions, etc

In some provinces of India societies are allowed a refund by their Local Government of three fourths of the money order commission (one per cent) charged by the post office on remittances between them and their financing agency, the Madras Committee recommended this for Madras and the Royal Commission on Agriculture recommended its extension generally

Property and funds of registered societies

Restrictions on loans

29 (1) A registered society shall not make a loan to any person other than a member

Provided that with the general or special sanction of the Registrar, a registered society may make loans to another registered society

The Bombay Act apparently gives the Registrar authority to sanction a loan to any person other than a member

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property

Madras adds —"other than agricultural produce"

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies

The Burma Act omits clause (2) In that country there are a number of Chinese pawnbrokers who do a good business on the security of moveable property Madras has a clause "a registered society may make a loan to a depositor on the security of his deposit"

On the general subject of loans, see notes to section 43 (*o*)

The word "loan" here includes loans in kind (e g, grain) as well as in cash In Italy the law enacts that loans shall always be paid over in cash

Even in regard to such an elemental principle as this it would appear that the practice varies Talking of French Credit Societies Herrick (Rural Credits, p 340) says "the law does not restrict the local societies to lending to members only, they may lend to any farmer who needs money for an agricultural purpose but only the paper of a member may be discounted at the Regional Bank" The Italian Peoples' Banks "even extend credit to non members who are in need and worthy of their help The larger banks all have special funds for this benevolence (*ibid*, p 352) The Austrian Credit Societies lend to members only (*ibid*, p 376) In Roumania about one third of the loans are granted to non members (p 405) Mr Wolff says "As a general rule lending must be confined to members It would not however, do to press such limitation unduly in view of this not unlikely occurrence The bank may have more money on hand than it knows how to employ in loans to members Under such circumstances it ought to be permissible to place some of the surplus money, in an exceptional way, in the shape of loans even to non member institutions or capitalists of undoubted solvency The ordinary current loan business should be confined to members only"[1]

In India it is the general practice to limit loans to members or to other societies

Member—See definition, section 2 (*c*) and section 5 and notes thereunder Note also that the object of the society must be the promotion of the interests of the members only A loan issued by the Committee to non-members may be recovered from them as they are personally responsible for all loss sustained by their illegal acts

[1] Co operative Credit for the U S, p 47

Loans having as their sole objects the investment of funds are not affected by this prohibition, it does not, for instance, serve to prevent a society making a deposit in any mode permitted by section 32 While the sanction of the Registrar is required for a loan to another registered society, it is not required to a deposit in such society (*cf* sec 32 (1) *c*]

In Germany the consent of the Board of Supervision is necessary for any loan granted to a member of the Committee and generally such loans are prohibited in the by laws As already pointed out in the notes to section 4, the unlimited liability of members is protected by this prohibition

"*Immoveable property*" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth (General Clauses Act, sec 3, cl 25)

"*Moveable property*" shall mean property of every description except immoveable property (*ibid*, cl 34)

Clause (2) is the result of much controversy The question as to whether a society s operations should include pawn broking was carefully discussed between 1900 and 1904 The original bill provided that a rural society should not lend money on the security of moveable property except on agricultural produce, being the property of the member to whom the loan was made The Government of India Resolution of 29th April, 1904, stated the case as follows —

No provisions of the original bill were more severely criticised by some, or more stoutly supported by others, than those which related to loans upon the security of jewellery and upon the mortgage of land It had been proposed to prohibit rural societies from advancing money against jewels, on the ground that the basis upon which these societies should work was not material security, but the credit which arose from the individual character and substance of their members It was pointed out in reply that, while personal credit was undoubtedly the basis of their transactions, such things as jewels might properly be received as collateral security, that the custom of the country is to regard jewellery as available for this purpose and that if a member is debarred from utilising his material credit to the full in borrowing from his society, there will be a danger of his using it to borrow from the money lender After full

consideration of the question it was decided that while there are practical difficulties in connection with the custody and valuation of jewellery which might be formidable in the case of some village societies, it would be well to make distinctions. When a rural society is located in a town or large village with silversmiths available, with a ready market at hand, and with members and officers of intelligence, it may safely be trusted to conduct transactions which might be dangerous in the case of a more strictly rustic association. Power has, therefore, been given to the Registrar to allow any society, which he thinks can safely be trusted, to advance money upon jewellery; and he will be able to feel his way in the matter.[1]

There is one form of moveable property which should never be accepted as security and that is the member's own shares.[2] The society already holds a general lien on them (sec. 20), so it is absurd to add a special one. Share capital is really the security for the depositors and not for shareholders. A man who owes his society the full value of his shares is a shareholder only in name, and if the society be wound up, so much of the loan may be dead loss. To accept its own shares as security is to accept its own capital (*cf.* Committee's Report, para. 67).

One form of moveable property on which societies should always be ready to lend is, of course, harvested crops. In the earlier discussions the difference between jewellery and harvested crops as suitable security seems to have escaped attention. In Madras, Loan and Sale Societies are formed with the primary object of advancing money on such security which is stored in godowns owned or rented by the society and the new Act legalises such loans. The Punjab Commission shops and similar sale societies elsewhere advance on produce in their custody. Joint-stock banks are generally willing to assist societies which advance on stored produce.

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[1] 'Credit societies have been tempted to assist members to acquire small holdings on real-estate mortgages and have invested their surpluses in such securities. Serious consequences have resulted from this practice.....bitter experience is gradually teaching co-operators to let real-estate mortgages alone' (Herrick, p. 468).

Wolff (Co-operation in India, p. 166) objects that in hardly any case does pledge-credit educate.

[2] The Bombay rules expressly forbid this: 'The shares of the society may not be hypothecated to that society by its members as security for a loan.'

In Mysore shares are accepted as security for loans, but the Co-operative Committee (1923) advised that this be stopped.

Madras lends a lot of money on pledge of moveables.

Clause 3 has reference to the distinction between short term credit societies and long term, mortgage or land banks. The Government of India Resolution stated the case as follows :—

The question of mortgage was still more difficult. Almost all the considerations upon either side which have been referred to in the preceding paragraph apply here also, with the addition of others of still greater importance. On the one hand, one of the methods in which an involved cultivator can most effectively be assisted is by enabling him to substitute a mortgage upon reasonable for one upon exorbitant terms ; and a member who is refused the credit to which his property in land fairly entitles him, merely because he is not allowed to hypothecate it to the society, may be driven to the money-lender for a loan which, had it not been for the prohibition, he might have taken from the society with advantage to both parties. On the other hand, it is exceedingly inadvisable that these societies should be allowed to lock up their limited capital in a form in which it is not readily available ; their most useful form of business will probably be small loans for short periods with prompt recoveries ; and it is above all things desirable that they should keep out of the law courts. The final conclusion was that loans upon mortgage should be allowed in the first instance ; but that the Local Government should have power to prohibit or restrict them, either generally or in any particular case, if it is found that interference is necessary. The matter is one which should be very carefully watched.

In India mortgages on land are restricted in some provinces and, hence special legislation would be required were such loans to become common. Mr. Wolff writes that mortgage credit is, for banks of the order here spoken of, by common consent placed on the taboo..... The reasons why mortgage credit is not suitable for co-operative credit institutions of the type here spoken of are, that it locks up money for a long, it may be an indefinite, time ; and that the security given, if it should have to be seized, would be likely to prove a veritable white elephant. The co-operative credit bank relies for its funds upon withdrawable deposits and bankers' advances. These things will not bear the strain of mortgage loans..... You must have long term funds, debentures or land bonds, running for just so long as the loan runs.

The principles of co-operation do not conflict with long term mortgage loans provided the money is devoted to productive purposes but it is better to work on personal in preference to material security. The Committee on Co-operation (para. 66) held that there is nothing uncooperative in the hypothecation of immoveable property so long as it is recognised that personal security must be given and that the borrower's property is only a secondary or collateral protection. This must be taken in addition to the instruments executed by the borrower and his surety, and not in place of them; and the society should proceed in case of default against the sureties before taking action against the property. The chief objections are that there is difficulty in realising on such security and there is a tendency for loans so secured to be long, so that the capital of the bank so invested becomes dead.

The Madras Committee (1928) found that of the total outstanding loans (then 432 lakhs) 49·3 per cent. had been advanced on immoveable property. In Bihar and Orissa, mortgages are generally taken by societies as collateral security for loans over Rs. 200 with the principal object of preventing a borrower from mortgaging his property to a money-lender; but in realising debts, the societies have so far failed to make use of these mortgages on account of the difficulties involved. Following Bengal, it is now proposed to issue mortgage awards. The arbitrator will issue a preliminary award directing that the sum found due be paid within three months, and that, failing such payment, the property mortgaged shall be sold and the sale proceeds applied to the satisfaction of the dues of the society. If the defaulter fails to pay by the date fixed, the society has to file a petition praying for a final mortgage decree being passed. This final decree can be filed in the Civil Court for execution. The Indian Central Banking Enquiry Committee found that many Provincial Committees were of opinion that mortgage loans for long periods are unsuitable business for the rural credit societies. The reasons are: (1) the overshadowing of personal credit by mortgage may entail a neglect of co-operative principles, (2) the deposits of Co-operative Societies are for short periods and it is unsound finance to utilise them for long term loans, (3) the enquiry and the valuation preliminary to the grant of long term loans have to be entrusted to a trained agency controlled by and responsible to some central organisation, (4) the maintenance of valuable documents and title deeds cannot be entrusted to ordinary village societies, and (5) when

defaults occur in the repayment of mortgage loans, the assets of the society become frozen and the obtaining and execution of mortgage decrees for the recovery of overdue loans becomes an extremely difficult operation.

The above remarks refer to mortgage security in ordinary village societies. General banking practice regards as dangerous any long term loans not covered by long term deposits. The Committee felt that the establishment of well-conceived and well-administered mortgage associations or banks at the instance of the landed gentry of the country with the help of Government would be a measure of great value not only to the proprietors themselves, but also to the Government.

They might have added that the existence of well-managed long term mortgage banks would help the small village society to confine its activities to short term loans.

Such co-operative land mortgage banks[1] are now being organised but it remains to be seen what their effect will be. Mortgages are seldom made for productive purposes. The majority appear to have their origin in unsecured debt. The chief object of the new institutions is to advance money for redemption of existing mortgages.

Restrictions on borrowing.

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Burma adds:—and shall in respect of such deposits and loans make such provision for the maintenance of fluid resources as the Registrar may, by general or special order in this behalf, prescribe.

Under the former Act, section 9 ran: A society may receive deposits from members without restriction, but it may borrow from persons who are not members only to such extent and under such conditions as may be provided by its by-laws or by rules made under this Act. The Madras Act applies this provision to everyone, members or non-members.

Mr. Wolff described this restriction as unwise as what is wanted at the outset is other people's money; the credit sought is from outside. The present section is not open to

[1] The subject is very ably discussed in Mr. Strickland's book 'Studies in European Co-operation.' Vol. II, ch. I (1925).

Mr. Wolff's objections. The restriction is necessary in the interest of thrift for, as already remarked the savings of members must be accepted in preference to deposits from non-members. This section also enables the members to fix a limit in their by-laws to their unlimited liability.

This section (except in Madras) only refers to non-members. Deposits and loans from these cannot be received unless this is specially provided for by rule or in the by-laws [*cf.* sec. 43 (2) (*c*)]. The Indian Central Banking Enquiry Committee rightly pointed out that without the aid of an efficient and well-organised Central Banking System which can act as a true balancing centre for primary societies, the latter cannot receive and utilise non-members' deposits without risk and with profit. The Foreign Experts held that the primary society should aim at becoming the savings and loan bank for the village and suggested that members should on principle receive a somewhat higher rate of interest on deposits than non-members.

Of course, the most important non-member from which a society can obtain a loan in some countries is the Government, and Madras has a special section 31: The Local Government may, subject to such rules as may be prescribed in this behalf, grant loans to, take shares in, or give financial assistance in any other form to a registered society. In British Columbia, an agricultural association can borrow from Government up to 80 per cent. of its subscribed capital. The amount of stock paid up must be at least 50 per cent. of the subscribed capital. The loans are repaid within 20 years at 4 per cent. and with a sinking fund.

In Quebec, an agricultural association may not borrow more than four times the aggregate amount of the subscribed shares and reserve fund.

This section applies to Central Banks whose gross liabilities should not ordinarily exceed ten or at the most twelve times their capital *plus* reserve fund. It is in practice more important to fix a low maximum on dividends. This removes the temptation to seek high profits and ensures a more rapid growth of the reserve. A *deposit* ordinarily is money lodged in a bank for safety or convenience; here it consists of money offered to a society at its fixed rates; while a *loan* is secured by a society on the lender's terms when it cannot get enough deposits. The section seems to have direct reference to the English law on the subject. Prior to 1898, a Friendly Society could not receive a deposit from non-members. Sir Horace Plunkett, in order to

facilitate the establishment of Co-operative Societies in Ireland, secured an amendment conferring upon them the power to borrow and to receive deposits from any person, whether members or not. This power is expressly limited to societies which by rule provide that no part of the funds shall be divided by way of profits, bonus, dividend or otherwise among the members and that all money lent to members shall be applied to such purpose as the society or its committee of management may approve [The Societies Borrowing Powers Act, 1898]. The condition that certain societies should not be allowed to distribute profit or dividend so long as they are dependent on deposits from non-members is one that might be imposed in India.

In Hungary the Central Credit Society has a decisive voice in permitting or prohibiting a Co-operative Society borrowing from a third party. Its own loans to primary societies do not usually exceed three times the amount of their share-capital (Monograph). The control of a central financing institution will probably prove more acceptable than the best-intentioned rule of a Local Government.

Restrictions on other transactions with non-members.

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules, prescribe.

See section 43 (1).

The transactions of credit societies are dealt with by section 29 (1). So that this section refers to transactions other than credit. The general rule is that there should be no transactions with non-members except for the benefit of members.[1] A credit society may borrow from non-members but may not lend to them, a stores society may purchase from but may not sell to them, while a sale society may sell to but may not purchase from them. The co-operative idea, as Sir F. Nicholson points out, connotes membership and no departure from it should be allowed. Societies are associations for self-help and they have no duties to help others and

[1] *Cf.* Herrick, p. 248. 'A Co-operative Society must of necessity in some circumstances deal with outsiders, but its benefits and advantages are all confined to members..... The Co-operative Society excludes the public whenever it is possible to do so, and conducts its operations as on a common account for the mutual benefit of members alone.' Also p. 449, writing of Quebec, 'all the benefits of the association must be confined to members.'

the law does not empower any one to impose such obligations upon them. Transactions with non-members may be prohibited or restricted; they cannot be ordered to be undertaken. The *Committee on Co-operation* did not think it possible to lay down any general rule but considered that as far as possible such dealing with non-members should be avoided. They would not press this rule in cases where the operations of a society, if confined to its own members, would be so restricted that it could not be managed with any prospect of profit or economy.

For instance, agricultural implements may be sold at wholesale rates only in lots of 25, whereas the members of a society may only require 20 or 22. in such a case the society would be justified in disposing of the balance to non-members. Mr. Wolff referring to supply societies writes that observance of the wholesome canon that no business is to be entered into with non-members is likely soon to serve as a magnet to attract more members..... There has been no more effective recruiting officer for German Agricultural Co-operation than the legal prohibition of dealing with non-members.

On the other hand it would seem that in England and Italy, transactions with non-members are a useful means of attracting them to become members. If a man deals with a co-operative store and receives no dividend or a less dividend than is paid to members, he inclines to become a member. The merits and demerits of transactions with non-members form a theme for endless discussion. The possession of valuable privileges renders societies open to restrictions imposed at the instance of private traders or by Government.

In the former German Act, Distributive Societies may only sell goods in the ordinary course of business to members or their representatives. But in 1896, the Act was amended to remove this limitation for Agricultural Distributive Societies which, without keeping an open shop, deal in goods which from their nature are exclusively for use in agricultural operations. But Mr. Cahill says: (p. 170), that dealings are not encouraged by the societies, as new members are not likely to be attracted, if the advantages of membership, without its duties, are thus obtainable. When societies have a surplus of stock, having obtained more than their members ordered or bought, they often dispose of it to non-members. Similarly the Italians permit of sale of agricultural implements, etc., to non-members. In the Irish

Dairy Societies, a farmer must join within three months of his commencing to supply milk, or the Committee may exclude him from dealing with the dairy.

The Argentine Government proposed to limit the advantages of the Co-operative Societies Act to co-operative distributive societies in which the sale is limited to members only. In Hungary the co-operative distributive societies sell to non-members also, and this has occasioned much protestation from the shopkeepers (although the societies are not exempted from taxes and duties) (Monograph). The House of Lords Committee on the Thrift and Credits Bill in recommending that credit banks should be empowered to carry on, jointly with their banking business, a co-operative trading business, added " the trading of such bank should be confined to its own members." In Italy, societies for manufacturing manures sell freely to non-members.

This prohibition against transactions with non-members is based upon two considerations. First Co-operative Societies are associations for mutual help amongst members. They render the best possible service at the lowest possible rate and make no commercial profit. Any surplus is to be returned to the members either as a bonus upon their transactions or as an addition to the society's reserve fund. If a society regularly deals with non-members, it makes a commercial profit out of them and opens a door to greed for dividends. It lays itself open to assessment to Income-Tax and to loss of its privileges (*cf.* notes to sec. 28). Secondly, co-operation stands for fair play all round. It is open to any body of men to associate together to improve their economic position by legitimate means, but if they compete with private traders they lose their right to special privileges. The private traders have a right to insist that Co-operative Societies must not compete with them for the custom of non-members.

In order to ensure that no hardship upon non-members is inflicted by this prohibition, it is incumbent upon Co-operative Societies to be open to all qualified for membership [*cf.* notes to sections 6, 28 and 43 (*q*)].

The right or interest of a non-member to deal with a Co-operative Society does not exist; but where such dealings are permitted a problem arises as to whether non-members should share in the patronage dividend. In the U. S. A. twelve co-operative laws state that non-members shall or may receive patronage dividends, and

several of these specify that the rate to non members shall be one half the rate paid to members

On no account whatsoever should credit be given to a non member English Co operative Societies bar credit and the rule of compulsory arbitration does not apply to debts owed by non members

Where Sale Societies or Commission Shops deal in the produce of non member there is no objection to an advance payment on the security of the goods deposited for sale

Investment of funds

32 (1) A registered society may invest or deposit its funds—

(*a*) in the Government Savings Bank or

(*b*) in any of the securities specified in section 20 of the Indian Trusts Act 1882 or

(*c*) in the shares or on the security of any other registered society or

(*d*) with any bank or person carrying on the business of banking approved for this purpose by the Registrar or

(*e*) in any other mode permitted by the rules

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed

This section is permissive

Invest convert into some other form of wealth usually of a more or less permanent nature (Century Dictionary)

Funds the stock or accumulation of money or other form of wealth available for the purpose

This section refers to funds not immediately required in the business of the society and not merely to the reserve fund [See notes to sec 29 (1) and the distribution between a loan and a deposit] The section is permissive so a primary society is not debarred from using its reserve fund in its own business

The society has a right to invest its funds in any of the securities referred to in clauses (*a*) to (*d*) Clause (*e*) expressly excludes the previous clauses so that the rules cannot take away this right or limit the society s choice

(*a*) *Government Savings Bank.*—Co-operative Societies' accounts are considered as public accounts. The following concessions have been granted:—

(1) Societies may withdraw sums up to Rs. 3,000 from their accounts on three days' notice and up to Rs. 10,000 on ten days' notice at all Post Offices situated at District Headquarters or at taluka headquarters, where there is also a telegraph office.

(2) Societies may withdraw sums up to Rs. 3,000 on ten days' notice from all other Post Offices.

(*b*) *Section* 20 *of the Indian Trusts Act*, 1882, allows investments in the following:—

(*a*) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) in stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Secretary of State for India in Council; or in debentures of the Bombay Central Co-operative Bank, Limited, the interest whereon shall have been guaranteed by the Secretary of State for India in Council[1];

(*d*) in debentures or other securities for money issued under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency town, or in Rangoon town, or by or on behalf of the trustees of the port of Karachi;

(*e*) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

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[1] Added by Act XXI of 1917.

(*f*) on any other security expressly authorised by the instrument of trust or by any rule which the High Court may from time to time prescribe in this behalf

(*c*) *In any other registered society*—The Committee on Co operation object to primary societies depositing their reserve fund in Central Banks but advocate the deposit of their surplus funds in them

The Industrial and Provident Societies Act (sec 38) expressly adds provided that no such investment be made in the shares of any society or company other than one with limited liability This should be the rule in India (*cf* section 4 proviso 2) and this proviso has been added to this clause in the Bombay and Madras Acts Some laws rightly impose a limit on the amount that may be so invested and name the majority in a general meeting required to authorise such an investment

(*d*) The House of Lords Committee on the Thrift and Credit Bill recommended that thrift and credit banks should be empowered to deposit their surplus in a local joint stock bank if they so desire

Apparently a member treasurer need not be approved for ordinary deposits

(*e*) *In any other mode* e g in the erection of offices and purchase of land therefor but not in the shares of any Company to which any reserve liability attaches It must not be deposited on personal security as this would approach an evasion of section 29 (1)

The Punjab has a rule a registered Co operative Society may invest or deposit its funds in any bonds or loan issued by the Punjab Government and secured upon its revenues

The Act does not prescribe the authority which may sanction the investments the Committee or majority at a general meeting Rules may be framed under section 43 (*p*)

For convenience of reference it may be mentioned here that societies are permitted to keep their funds in a strong box in the Government Treasury

Funds not to be divided by way of profit

33 No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Provided also that in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

The Bombay Act is given in the Appendix. It restricts dividends to ten per cent. But the prohibition of a bonus is omitted and societies there have been found distributing a bonus in addition to the dividend. In the United Provinces, societies for production and distribution are now allowed by rule to give to members a dividend on their share-capital as well as a bonus on their non-credit dealings subject to the limitation that the whole account so distributed in dividend and bonus shall not exceed 50 per cent. of the net profit on the year's working.

This is hardly co-operative and must tend to encourage the shareholder who does not deal with the society. Bombay which omits this reference to a bonus supplies the deficiency by a rule forbidding any bonus in addition to dividend.

Madras specifically allows payment to a member for work done by him as secretary or as clerk on such scale as may be prescribed by the by-laws, and also allows a bonus to him. It omits the proviso as to societies with unlimited liability and leaves this to the rules and by-laws.

In a Co-operative Credit Society on the Raiffeisen model all profits go to an indivisible reserve ; this reserve on liquidation is not divided amongst the members but is devoted to some object of public utility or it may be kept in deposit until a new society is started in the same area.

In stores societies on the Rochdale plan, the profits (after allowing for reserve) are distributed amongst the members as a dividend on the amount of transactions. This is distribution on a patronage basis. The main principle is clear and such confusion as there is, arises from the use of the words " profits " and " dividend." Co-operation aims at rendering services to the member at the actual cost of those services. Ordinary business caution requires that

some provision should be made for unforeseen contingencies and accordingly members are usually called upon to pay more than is necessary The resulting surplus belongs to the members in the proportion in which they have contributed to it In stores (distributive societies) this surplus is accordingly returned as a rebate on purchases In sale societies, it is refunded on goods sent for sale In actual practice it has, in England, been found expedient to sell at market-rates and to return the benefit arising from co operative purchase in the form of a bonus or rebate, commonly referred to as dividend This aggregate rebate cannot accurately be called profits, as it would be absurd to suggest that the members in their corporate capacity were trying to get the better of themselves in their individual capacity[1] Unfortunately many people fail to realise that the aim of co operation is that all should share in the benefits in proportion to the support given by each to the enterprise, and accordingly it becomes advisable that co operative laws should make obligatory a truly co operative method of distributing the earnings There are four points to be provided for —the payment of interest on capital, the setting aside of a reserve fund, the provision of an educational fund and the distribution of profits in the form of patronage dividends

In England, five per cent was for long regarded as a fair rate of interest In America, various States have fixed maxima, varying from five to ten per cent Whatever sum be fixed, it represents all that co operation allows to capital It seems desirable to include a reference to this in this Act The proportion to be set aside for reserve varies in different countries, and must vary according to the nature of the business done The two English Acts do not prescribe any reserve fund at all, but there it is generally recognised that the fundamental obligations of business make a provision for reserve necessary[2] The proportion of twenty-five per cent in this section seems too high for distributive societies and it has been proposed to amend the Act so as to allow Local Governments to prescribe a lower proportion for these

The New York State law relating to productive Co operative Societies prescribes that profits shall be devoted, firstly, to payment of a dividend not exceeding six per cent on capital stock, secondly, ten per cent to reserve, thirdly,

[1] *Cf* Rural Reconstruction in Ireland, p 100
[2] *Cf* Tetlow, p 176

five per cent. to an educational fund to be used in teaching co-operation; the balance is divided amongst members on transactions (non-members get half rate).

In Saskatchewan (non-credit) the directors must so apportion the net profits as (*a*) to set aside 15 per cent. for a reserve fund until that fund equals at least 30 per cent. of the paid-up capital; (*b*) to pay interest on the paid-up capital stock not exceeding 6 per cent.; (*c*) to divide the remaining profits among the patrons of the association whether shareholders or not, in proportion to the volume of business done, unless by by-law it be provided that the dividend due to a non-shareholder may be retained and credited to him on account of capital stock until an amount is accumulated equal to the par value of one share. The patron then receives a stock certificate and can thereafter share in the dividends like the other shareholders.

In Manitoba, the compulsory reserve is ten per cent. until the 30 per cent. limit is reached; the interest on stock must not exceed 7 per cent. If a non-shareholding patron receives a dividend, this must first be credited to the purchase of one share.

In Quebec, until the reserve fund is equal to the subscribed capital the total amount of the dividends distributed must not exceed eight per cent. of the paid-up capital. Thereafter distribution on a patronage basis is allowed.

This section is not very clearly worded.

In societies with unlimited liability, no distribution of profits shall be made, without the permission of the Local Government. This general prohibition accords with Raiffeisen's object of creating capital where none existed before. The annual surplus was to be accumulated steadily until the fund was sufficient for working capital; thereafter the profits were to be devoted to objects of public utility for the general benefit of the members. In Europe, societies which have no shares pay no dividends,[1] and this was the original law in India. With the development of societies with shares and unlimited liability, there came a demand for dividends on shares and it was left to Local Governments to deal with this.[2] The general rule is to withhold permission

[1] Herrick, p. 463.

[2] Sir R. Carlyle introducing the New Act of 1912 said (Ray, p. 281):—It will, I think, generally be recognised that the inclusion of provision for the division of profits to the members of unlimited liability societies tends to bring in influences dangerous to the true co-operative spirit. We must, however, accept facts, and not insist on pushing too far our co-operative idealism.

until the society is full ten years old; after that, the rules vary. In the English Societies' Borrowing Powers Act, societies accepting deposits from non-members should not divide any part of the funds by way to bonus or dividend. The desirability of placing all profits to reserve against the possibility of loss to any depositor is so clear, that it need not be discussed further. There thus emerge two important principles which should be embodied in the Act.

In societies with unlimited liability and without shares, no division of profits amongst the members should be allowed.

In societies with unlimited liability and with shares, no division of profits should be allowed so long as there are any deposits from non-members.

The Madras Committee recommended that in primary credit societies the payment of dividends should be discouraged. The Burma Committee supported this and further recommended that no society of unlimited liability should by rule be allowed to distribute a dividend so long as it holds deposits from non-members or borrows from its financing agency.

Where the liability is limited, the law should prescribe that out of the annual profits, a dividend on shares may be allowed not exceeding (by one or two per cent. ?) the ordinary interest rate paid by the society, a proportion must be put to reserve until the capital owned by the society is sufficient for its needs, and the balance may be distributed to members in proportion to their transactions with the society.

It seems to be doubtful whether this section would permit a store society to distribute a "dividend" on transactions more frequently than once a year. An amendment seems desirable to make it clear that this can be done. Rules may be made under section 43 (*p*) and (*r*). It is extremely important that the method of division of funds by way of profit should be strictly defined, as any mistake may lead to disputes.

Under section 46, the Punjab Government has granted a general exemption to all registered co-operative thrift societies; and has also allowed a regimental society (10th Hodson's Horse) to put to reserve only five per cent. of its net profits. This was an old society whose membership changes as older soldiers retire and new recruits come in.

The Madras Committee held that in purely thrift societies, a reserve fund was unnecessary; it reduced the tangible

advantages of membership and so might discourage thrift. They recommended exemption from the compulsory maintenance of a reserve fund. Punjab opinion, however, favours a small reserve fund to meet such eventualities as a decline in the value of investments. The rule, however, runs :—

"Credit societies with shares and whether with limited or unlimited liability which have for their main object the accumulation of their members' savings are exempt from setting apart as reserve fund any portion of their profits, provided they have provision in their by-laws neither for borrowing from non-members nor for lending to their members."

Bihar and Orissa has a similar rule for thrift and savings societies but requires 5 per cent. of the net profits in any year to be carried to a reserve fund.

A few more points deserve notice.

The first paragraph of this section is the ground for remission of Income-Tax. There are no profits in the ordinary commercial sense to assess. It also seems to prohibit a return of share-capital (except on liquidation). Further it is to be noticed that the reserve fund becomes divisible as soon as registration is cancelled so that any design to preserve the fund for future societies, etc., must be clearly embodied in the rules.

The Act itself does not permit of any division of profits in cash. In limited liability societies, division in cash may be provided for in the rules or by-laws ; in unlimited liability societies, no division in cash may be made unless sanctioned by general or special order of the Local Government.

Contribution to charitable purpose.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

The definition is as follows :—

Section 2. In this Act "charitable purpose" includes relief of the poor, education, medical relief, and the

advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

It has been suggested that the maximum to might now suitably be raised from ten to fifty per cent.; most co-operators would be in favour of an increase to twenty-five per cent.

The Bombay Act has raised the limit to a sum not exceeding 20 per cent. of its net profits.

As pointed out by the Registrar, Bihar and Orissa, societies may, and frequently do, carry part of the profits to special funds for education, etc., but any expenditure from such a fund still requires the sanction of the Registrar. The allocation of profits to such funds does not require sanction, it is the contribution from them to any charitable purpose that calls for sanction. Madras no longer requires the Registrar's sanction.

The question whether an Industrial and Provident Society could devote any part of its funds to education was fought out at great length in England. The Rochdale Pioneers insisted on provision for this being made in their rules and the Registrar refused to register them. As the result of a long struggle the right was conceded by Parliament. Mr. Brabrook writes: From the earliest formation of co-operative stores, it has been made a feature of the scheme that some of the profits should be applied to educational purposes. This . . . . . embodies the idea of self-improvement and self-help, which is fundamental to the movement. The educational work of the movement may be divided into three branches: education in the principles and methods of co-operation, provision for the acquisition of knowledge on general subjects, and arrangements for recreation and pleasure . . . .

In some countries, a contribution to some educational or charitable purpose is compulsory. For instance the Wisconsin (U. S. A.) law enacts that after paying six per cent. on stock (shares) and ten per cent. to reserve, the directors shall set aside five per cent. of the net profits for an education fund to be used in teaching co-operation.[1] Nine American State laws make an education fund compulsory, eleven require a by-law on the subject.

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[1] Powell, p. 45.

Inspection of Affairs

35. (1) The Registrar may of his own motion and shall on the request of the Collector, or on the application of a majority of the Committee, or of not less than one-third of the members, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society

Inquiry by Registrar.

(2) All officers and members of the society shall furnish such information[1] in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require

Bombay and Burma have omitted the words "and shall on the request of the collector" Madras retains them

Cf Indian Companies Act, sections 137, 138 and 140 Under these sections, the Registrar may call for such information or explanation as he may consider necessary in order that documents submitted to him may afford full particulars of matters to which they relate The company is bound to supply the information under a penalty, and the information is open to public inspection If the information discloses an unsatisfactory state of affairs, the Registrar may report to the Local Government, which is empowered to appoint a competent inspector to make an investigation Such an investigation may also be ordered on the application of the holders of one fifth (Banking Company) or of one-tenth (any other company) of the shares

The Industrial and Provident Societies Act (sec 18) sensibly limits the applicants to members "each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application" But ten members can apply The Friendly Societies Act requires only one fifth of the whole number of members, they must show good reason, and give evidence that they

[1] In amending the Act words should be inserted here requiring officers and members to produce books, etc, as in section 17 (3) A penal clause for default might also be added Madras has a rule —The Registrar, or any person authorised by him to hold inquiry under section 35 or 36 of the Act shall have power by summons to compel any person to attend as a witness or to produce any document before him and also to administer oaths under sections 4 and 5 of the Oaths Act

are not actuated by malicious motives. They may be required to give security for costs.

The Inspecting Officer may require the production of all or any of the books of the society and in England he may examine on oath any officer, member, agent, or servant of the society in relation to its business. [*Cf.* sec. 4 (*a*) Oaths Act: all persons having by law or consent of parties authority to receive evidence may administer oaths and affirmations . . . .].

Japanese Societies are subject to most strict inspection and supervision by the State.[1] The Report of the English A. O. S. for 1923 says: Committees should make it a practice to have their business methods thoroughly overhauled every five years.....it is the very essence of sound management; though it is pleasant enough to perform miracles of life-saving, it would be pleasanter far and easier to help to keep societies well clear of rocks or shoals.

The Burma Committee recommended that all inspection notes of societies should be shown to the financing bank when required.

Clause (2).—Failure to produce or wilfully neglecting or refusing to furnish any information so required is an offence under the English Act and, in the case of companies, under the Indian Companies Act [sec. 140, cl. (3)]. In amending the Act, a third clause should be inserted. The result of any enquiry under this section shall be communicated to the Society; and a fourth: An inspector appointed under this section may require the production of all or any of the books and documents of the society. (See Friendly Societies Act.)

The Bombay and Burma Acts have adopted the suggested third clause and Bombay and Madras have provided a penalty for neglecting or refusing information. (See Appendix.) Madras prescribes that the Registrar shall communicate the result to the financing bank, if any, to which the society is indebted. The new Act also empowers the Registrar or authorised inquirer to secure free access to the books, accounts, documents securities, cash and other properties, to summon persons possessing or responsible for their custody or anyone believed to have knowledge of the affairs of the society, to insist on a general meeting being called and to determine the agenda. (*Cf.* Appendix.)

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[1] Ogata: The Co-operative Movement in Japan, p. 91.

In England the Registrar has no authority to interfere with the internal working of societies unless the members themselves (as in this section) call upon him to do so It is very important that there should be ensured to the members some method of ascertaining what are the contracts into which their society has entered how their Committee are carrying on the business and what is the financial condition of the concern This right to an enquiry is important for the maintenance of the principle of equitable association It gives a minority of the members the right to learn what is being done by the Committee elected by the majority As Mr Wolff points out auditing however skilled is not inspection It has regard to actuarial account keeping Inspection applies to the use which the punchayet has made of its discretionary powers the punchayet needs such a sheltering authority to shield it against improper demands [1] In co operative banking the administrators that we have to deal with are for the most part mere amateur bankers little skilled in the technical details of the business and without much experience Raiffeisen found—just as Indian Registrars find in the present day and Irish organisers in Ireland—that the little Committees and Councils were in many cases not capable of keeping accounts and exercising their other functions in the most correct way The idea of obligatory inspection by a higher authority is now everywhere approved The difficulty is to get people to agree respecting the shape which such inspection is to take [2]

Inspection of books of indebted society

36 (1) The Registrar shall on the application of a creditor of a registered society inspect or direct some person authorised by him by order in writing in this behalf to inspect the books of the society

Provided that—

(*a*) the applicant satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and

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[1] Co operation in India p 172
[2] Co operative Credit for the U S pp 161 *et seq*

(*b*) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

A penalty is required for refusal to produce the books. Bombay provides for this. It has changed "shall" for "may," alleging practical considerations. Burma considered the point but adhered wisely to "shall." Madras has elected for "may". Its new Act gives the Registrar or the inquirer authorised by him all the powers conferred in the preceding section. It further directs that the result of the inquiry shall be communicated to the financing bank, if any, to which the society is indebted.

Inspection, to a commercial banker, means an inquiry into the financial status of a society (Madras Committee). Supervision, on the other hand, involves constant administrative assistance in routine work, advice on financial matters, and general guidance, both from the business and the co-operative aspects.

This section is based on section 163, Indian Companies Act. If a creditor to whom the Company owes a sum exceeding Rs. 500 serves a demand which the Company neglects to pay for three weeks, the Company "shall be deemed to be unable to pay its debts" and may be wound up by the Court. The above section of the Co-operative Societies Act fixes no minimum to the sum; presumably three weeks would be a reasonable period. It also does not require a Registrar to wind up a society which is unable to pay its debts but it would be difficult to conceive of a Registrar refraining from ordering liquidation in such a case. A creditor who holds a decree against a society, being unable to detain the society in the civil prison, can only proceed by the attachment and sale of its property. There is no statute which allows a decree holder against a registered society to pursue his remedy in execution against a member, and therefore if the property of the society is insufficient the Registrar is bound to come to the assistance of the creditor and to enforce the liability of the members, if necessary, by winding up. The South African Act provides that if judgment has been obtained against the society and such judgment is not within three months thereafter satisfied, the plaintiff may proceed against all members or

any member of such society in respect of such liability Something similar should be inserted here when the Act is amended

The Madras Committee recommended that the provincial bank should not only have power to inspect central banks financed by it but that the responsibility for such inspection should be imposed upon it Most people will agree that banks and societies should welcome an inspection of their books by their financing agency but such inspection should be rigidly confined to obtaining information for the financing bank Experience however shows that this kind of inspection is apt to lead to ignorant interference with the internal affairs The new Act gives the financing bank the right to inspect the books of any society indebted to it The inspecting officer must be certified by the Registrar as competent to undertake such an inspection The inspecting officer has full rights to secure information

It was proposed in Burma to empower the Registrar to require a society to pay any sum found on inquiry to be withheld without sufficient cause and also to apply to the Collector for recovery as arrears of land revenue The clause was omitted by the Select Committee on the draft Bill

Costs of inquiry

37 Where an inquiry is held under section 35 or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society

The Bombay and Burma Acts add —and the members or past members of the society

As both Acts make past members liable only for debts it is difficult to see how they can be liable for costs incurred, after they have ceased to be members Madras keeps to the old wording

Bombay further adds provided that—

(*a*) no order of apportionment of the costs shall be made under this section unless the society or persons liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard

(*b*) the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned

The Act also provides for an appeal from such order

Madras gets all that is secured in (*a*) by inserting in the third line of the section after may the words after giving the parties an opportunity to be heard It further enacts that costs may also be awarded to the financing bank in the case of an inspection by that banl

Recovery of costs

38 Any sum awarded by way of costs under section 37 may be recovered on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person

The Bombay Act prescribes that the application shall be by the Registrar and adds and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself

Madras enacts that the sum may be recovered as if it were an arrear of land revenue

Dissolution of Society

Dissolution

39. (1) If the Registrar after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three fourths of the members of a registered society is of opinion that the society ought to be dissolved, he may cancel the registration of the society

Burma introduces an intermediate stage prior to cancellation so here the Registrar may order the society to be wound up

Madras prescribes that a copy of the order shall forthwith be communicated to the society by registered post

(2) Any member of a society may, within two months from the date of an order made under sub section (1) appeal from such order

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

Madras adds :—and such confirmation is communicated to the society by registered post.

(5) The authority to which appeals under this section shall lie shall be the Local Government :

Provided that the Local Government may, by notification in the local official *Gazette*, direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

Burma substitutes " other " for " Revenue " in the penultimate line.

For the Bombay section 47, see Appendix.

As already indicated, a Registrar is morally bound to cancel the registration of a society that is unable to pay its debts.

As the Patna High Court F. B. noted, it must be assumed that the Registrar will act judicially. But the Burma Committee found that the Registrar had repeatedly been called upon by the Provincial Bank to inspect societies and he had failed to take effective measures to recover the loans or to liquidate the societies. The Committee therefore recommended an amendment to make it clear that the Registrar should ordinarily order to be wound up any society which was neglecting to pay up sums due on the demand of its creditor.

Members contemplating an application for cancellation under clause (1) must bear in mind the periods fixed, under sections 23 and 24, for the termination of the liability of past and deceased members. When the Act is amended it is hoped that clauses (3) and (4) will be amended to make it clear that a liquidator may be at once appointed with power to take possession of the books and assets pending the result of the appeal, if any.

Cancellation of registration of society.

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.[1]

The Bombay Act correctly adds the words "who are majors" after "members" in the third line; and adds "such members" after "ten" in the last line. Madras prefers: who have attained the age of majority.

If a registered company carries on business for more than six months after the number of members is reduced below seven, every member, who is cognisant of this fact, is liable for the payment of the whole debts of the company contracted during that time and may be sued for the same without joinder in the suit of any other member (sec. 147, Companies Act). That is to say, limited liability ceases. The South African Act, in addition, makes the members liable to a fine of five pounds a day.

Effect of cancellation of registration.

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(*a*) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect;

(*b*) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

Cf. sections 147 and 162 of the Indian Companies Act. The Registrar, here, takes the place of the Court under that Act. Cancellation may take place—

(*i*) as the result of an inspection made of his own motion;

[1] In the case of societies registered under the Friendly Societies Act, 'it would seem that if the number of members falls below seven, the society would not cease to exist or lose its rights, though if there were less than three it could hardly be said to exist, as the signature of three members is necessary to an amendment of rules' (Fuller, p. 36). In South Africa a society shall be dissolved when the number of its qualified members is reduced below seven.

(*ii*) as the result of an inspection made at the instance of the Collector;

(*iii*) as the result of an application by the Committee or one-third of the members;

(*iv*) on the society proving to be unable to pay its debts;

(*v*) at the request of three-fourths of its members; and

(*vi*) on its members declining below ten.

Following the English Acts, the Registrar could exercise his power of cancellation—

(*a*) on proof that a certificate of registration has been obtained by fraud or mistake;

(*b*) or that a society exists for an illegal purpose;

(*c*) or that it has violated any of the provisions of this Act (e.g., persistent lending to non-members sec. 29);

(*d*) or has ceased to exist (*cf.* Companies Act, if it does not commence business within a year, or suspends business for a year).

(*e*) (*Cf.* Committee's Report, para. 86) or that there is no hope of eventual solvency or progress.

Examples of illegal purpose are the pursuing of other business objects than those indicated in section 4, if, for instance, a Central Bank forsook its sole object of facilitating the operations of co-operative societies and took to general banking business it should be dissolved; similarly if a supply or stores society took to credit business. In England the Seditious Meetings Act exerted a very wholesome influence in preventing societies from becoming political bodies. A stores society embarking on general business with non-members might be dissolved at the instance of competing traders. Repeated failure to observe its own by-laws might entail cancellation; for instance, the conditions in section 6 as to residence of members in a fixed area and their similarity in tribe, class or occupation, must be adhered to. The Government of India have remarked that it is intended that the Registrar should, in sanctioning the proposed by-laws of a credit society, satisfy himself that proper residential and class qualifications are rendered obligatory for future members and the qualifications should not be altered save by an amendment of the by-laws sanctioned by the Registrar (sec. 11).

If a credit society began to divide its funds amongst the members without first meeting all its obligations to creditors, the Registrar would have to interfere at once. In Germany, a creditor may propose the opening of bankruptcy proceedings and the opening of such proceedings serves at once to dissolve the society.

The limit of ten members in section 40 presumably refers to major members only and the Bombay and Madras Acts specifically provide for this. Minor members must never become an appreciable proportion of the whole, else the three-fourths majority might consist of a few major members who have managed to secure representation of the minors.

This majority of three-fourths of the total number of members is probably too high. A joint-stock company requires a resolution to be carried by three-fourths of the members present and this has to be confirmed by a similar majority at a subsequent meeting. The German Act requires only a majority of three-fourths of the members present.

The effect of cancellation is to transfer the control of the society to the hands of the liquidator. The society ceases to enjoy privileges but retains all liability actually incurred and any such liability may be enforced against it as if the cancelling had not taken place. The shares become liable to attachment when registry is cancelled and members promptly incur liability for debts. Debts owned by members can no longer be recovered through arbitration proceedings and the liquidator has to resort to the Civil Courts; but the Bombay Act empowers the liquidator to get disputes referred to arbitration. If the society transacts business after cancellation each member becomes liable for the payment of the whole debts so incurred and may be sued for these individually. Liability is limited only to debts incurred prior to cancellation; the latter extinguishes the corporate body and leaves a number of individuals.

A society, whose registry has been cancelled, can only be re-admitted to registry as a new society making a fresh application (unless, of course, the order of cancellation was upset on appeal).

It should be noted that only present members can apply for cancellation. Past members and persons claiming through deceased members cannot seek to liquidate their liability by procuring dissolution.

In England before the Registrar can cancel registration, he must give two months' clear notice in writing to the society specifying briefly the ground of the proposed cancellation No such notice is prescribed in this Act but a rule could probably be made under section 43 (1)

See Bombay Act, section 49 in Appendix

Section 35 does not require the Registrar to communicate the results of his inspection to the society [*cf* sec 36 (2)] but presumably he does so In England, a society is not bound to act upon the advice tendered and it is left to the one-third minority to persuade their fellow-members In India, the Registrar can enforce his opinion by dissolving the society, this being practically the only legal punishment open to him The Local Government may withdraw privileges (sec 46)

Winding-up.

42. (1) Where the registration of a society is cancelled under section 39 or 40, the Registrar may appoint a competent person to be liquidator of the society

Burma adds and such person shall have power to take immediate possession of all assets belonging to the society, and of all books, records and other documents pertaining to the business thereof and to carry on the business of the society, so far as may be necessary for the beneficial winding-up of the same

In Bombay and Madras the requirement that the liquidator shall be competent is omitted

(2) A liquidator appointed under sub-section (1) shall have power—

Burma inserts as soon as the order of winding up takes effect

(*a*) to institute and defend suits and other legal proceedings on behalf of the society by his name of office,

(*b*) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society,

(*c*) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne; and

(*e*) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding-up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court, under the Code of Civil Procedure, 1908.

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.

(5) Orders made under this section shall, on application, be enforced as follows:—

(*a*) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court;

(*b*) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction

in respect of any matter connected with the dissolution of a registered society under this Act.

Burma inserts after "dissolution": or winding-up.

The corresponding sections, 50 and 51, of the Bombay Act and 47 of the Burma Act are reproduced in the Appendix.

This section follows the usual provisions as to liquidation. Burma, however, has introduced an intermediate stage of "winding-up"; a society is first ordered to be wound up and during this process it continues in existence; if the Registrar thinks the society should continue to exist he may (section 48) cancel the order for winding-up; otherwise he must, after considering the final report of the liquidator, order the registration to be cancelled.

In Germany, the liquidation has to be effected by the Committee of Management unless by the articles or by resolution of the general meeting it is entrusted to other persons. At least three liquidators must be appointed; one-tenth of the members may have the liquidators appointed by the Court.

Section 43 (*t*) provides for rules of procedure. The liquidator becomes invested with full powers on appointment. The Madras Committee recommended that the Registrar should be enabled to give the liquidator directions from time to time, and the Madras Act places the powers of the liquidator "subject to the control of the Registrar"; in Bombay the liquidator acts "with the sanction of the Registrar". In the Companies Act the Court confers the powers.

Clause (2) (*a*). The cancellation of registration terminates the existence of the corporate body (sec. 41) and therefore the power to institute and defend suits (sec. 18) passes to the liquidator. The words "by his name of office" have been added to remove the doubt as to whether the suit should be in the name of the society or in the liquidator's official name. In any suit brought by the society, a depositor could set off his deposit against the sum claimed. In amending the Act, the liquidator should be given power to refer disputes to arbitration.

Clause 2 (*b*). The benefits of registration appear in winding-up proceedings. In an unregistered society a creditor may sue any member he pleases for his whole debt and leave him to recoup himself out of the assets or from his fellow members. In a registered society, the assets

are realised and only the deficiency has to be made up by contributions from members and past members.

It is curious that the reference is only to past members and not to deceased members whose estates apparently are free from contributions. In view of section 24, it seems correct to assume that the liquidator can levy contributions from their estates, but he could only enforce these by Civil Suit. The Bombay and Madras Acts specifically provide for this by inserting the words: " or by the estates or nominees, heirs or legal representatives of deceased members." A similar amendment is desirable everywhere. Madras further adds: or by any officers or former officers. It has been suggested that the wording of this clause seems to prohibit the liquidator from modifying his order determining the contributions of members from time to time. It is thought that, under the law as it stands, a liquidator cannot use the unlimited liability of the non-borrowing members of the society until he has exhausted all possible steps against defaulting members. It is, therefore, proposed to amend the section by the insertion of the words " from time to time " after " determine." The Bombay and Madras Acts insert these words.

The Government of Burma has been advised that a liquidator's order under section 42 (2) (*b*), (*d*) or (*e*) is not a decree within the meaning of the Civil Procedure Code. Effect can be given to these orders (5) (*a*) by means of the machinery of a Civil Court having local jurisdiction.

A liquidator has no power to transfer his duties to other persons. He may appoint an agent to assist him and such agent could apply for the enforcement of orders. The liquidator cannot divest himself of his responsibilities.

Contribution usually means the amount payable by a member as such and does not include debts payable to the society. It is the unpaid portion of the liability. In a limited liability society with fully paid-up capital, it is *nil* unless it be held that dividends have been paid without being earned, in which case perhaps these might be recovered. It is not prescribed whether in an unlimited liability society with share-capital, the liquidator should fix contributions according to shares held or equally. As members' liability is equally irrespective of the number of shares held, the contributions should be equal up to the limit of the capacity of the smaller members, thereafter it is

inevitable that the richer should pay more.[1] Bombay and Madras specially provide that "contribution" shall include "debts due from such members or persons". Burma says "debts payable and the contribution" thus keeping the correct definition of "contribution." But the provision seems to give the liquidator power to order payment of debts even if barred by limitation; and when dealing with societies of unlimited liability the term used is not "members" but "persons", so that the liquidator may order payment from non-members (e.g., sureties). This is a serious power to confer on the liquidator. The Burma Committee pointed out that the liquidator was thus practically given the power of a civil court to adjudge claims for debts, and there was no appeal provided. They thought this was unnecessary and liable to lead to ill-feeling. They preferred the Madras Committee's solution of conferring on the liquidator the power to refer disputes to the Registrar for arbitration. In some provinces, all claims for debts are referred to arbitration before the order for winding-up is issued.

Also it is not clear whether members and past members would be regarded as equally liable or whether contributions should only be demanded from past members when the liability of existing members is not sufficient to cover deficiencies. On the analogy of Company Law, in a limited liability society, contribution would first be demanded from existing members up to the limit of the uncalled portion of their share and thereafter from past members. In unlimited liability societies, past members may be made to contribute forthwith. The basis of the liability of past members (secs. 23 and 24) should be the balance-sheet of the year in which they ceased to be members. The liquidator has no power under this section to decide who are members and past members and the Court [clause 5 (*a*)] cannot apparently hear objections from persons denying liability. Limitation for suits for unpaid calls on shares is six years.

If a member becomes insolvent, the assignee may disclaim his shares and the liquidator may claim for the uncalled sum but the insolvent member cannot be made a contributory.

From the list of powers there are some important omissions. Neither the Act, rules, nor by-laws contain

[1] 'The unlimited liability, which still remains the corner stone of the Raiffeisen system, is harder on the poor than on the rich, as assessment for losses are made share and share alike and might completely wipe out a small estate without noticeably diminishing a larger one'. Herrick, p. 293.

any directions as to the disposal of the books of a dissolved society.[1] But Madras now enacts that when the affairs of the society have been wound up the liquidator shall deposit the records of the society in such place as the Registrar may direct.

Outside Bombay and Madras it is not competent for the liquidator to make a decree under clause 2 (*b*) for loans owed by a member. There is nothing corresponding to section 186, Indian Companies Act, empowering a Court, after making a winding-up order, to order any contributory to pay any money due from him to the Company, exclusive of any money payable by virtue of any call. As compulsory arbitration is now the rule, it is difficult to see the objection to conferring on the liquidator the power, formerly held by the society, to refer disputes to arbitration. The Bombay Act confers this power but Madras restricts compulsory arbitration to societies still registered.

A liquidator cannot carry on the business of the society. But the Bombay and Madras Acts empower him to carry on the business of the society so far as may be necessary for the beneficial winding-up of the same.

Madras has a clause which appears to amplify clause 2 (*c*) above :—to pay claims against the society (including interest up to the date of cancellation of registration) according to their respective priorities, if any, in full or rateably, as the assets of the society permit : the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such cancellation at a rate fixed by him but not exceeding the contract rate in any case.

Clause (3). The Fourth Conference (1909) wished liquidators to be recognised as public servants within the meaning of the Penal Code (secs. 174 and 175) which makes punishable failure to attend when summoned and failure to produce a document when called upon to do so. Both Bombay and Madras Acts provide penalties for such failure. A liquidator cannot apparently summon individual contributories but he can, of course, and in fact must summon a general meeting.

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[1] *Semble* Companies Act, section 242. The disposal of books should be decided by the Registrar or the Society. They may be destroyed after three years. Bengal has now got a rule : 'The liquidator shall..... submit to the Registrar.....a final report and make over to the Registrar all books, registers and accounts belonging to the society and all books and accounts relating to such proceedings kept by him'.

amended so as to make recoverable as an arrear of land revenue any sum ordered by a liquidator to be recovered as a contribution to the assets of a society or as costs of liquidation, or as members' debts. In the United Provinces (Act III of 1919) the Co-operative Societies Act has been amended so that this section shall be construed as if—

(*a*) after sub-section (4) of the said section the following sub-section were inserted, namely: —"(4A) Any sum ordered under this section to be recovered as a contribution to the assets of the society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar of Co-operative Societies in the same manner as arrears of land revenue", and

(*b*) at the beginning of sub-section (5) of the said section the following words were inserted, namely:—"Save as provided in sub-section (4A)."

This U. P. Act has been extended to Ajmere-Merwara (1922). Madras followed suit in 1920, and its Act was extended to Coorg. As to the benefits of this amendment, Assam reported in 1922 that "much delay still occurs in the recovery of assets through the certificate procedure. The deputy commissioners were requested to effect speedier collections but so far there has been little or no improvement in collections. Some liquidators are again resorting to the Civil Courts for enforcement of their orders owing to delays in the courts of certificate officers; and again in 1923: "the experience of the past three years has been sufficient to demonstrate that, in Assam at least, the certificate procedure does not provide a method of recovery swifter and surer than the ordinary Civil Court procedure." Madras (1922-23) also reports that in spite of the amendment "the rate at which liquidation proceedings are carried through still seems very slow." Bombay inserts a special clause in its Act empowering the liquidator to issue requisitions under section 59 (of its Act) upon the Collector for the recovery as arrears of land revenue of any sum ordered by him to be recovered as dues from members or as a contribution to the assets of the society or to the costs of liquidation. Burma (section 51) also enacts that all sums payable by order of a liquidator (including costs of liquidation) shall be recovered in the same manner as arrears of land revenue on a requisition being made to the Registrar to the Collector.

Madras amplifies sub clause (6) into a special section 48 — no civil court shall take cognisance of any matter connected with the winding up or dissolution of a society and when a liquidator has been appointed no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose

Rules

43. (1) The Local Government may for the whole or any part of the Province and for any registered society or class of such societies make rules to carry out the purposes of this Act Rules

Where by any Act of the Governor General in Council a power to issue rules is conferred then that power includes a power exercisable in the like manner and subject to the like sanction and conditions if any to add to amend vary or rescind any rules so issued [General Clauses Act sec 21]

The United Provinces have rules dealing with transac tions with persons other than members (sec 31) Transac tions with non members are prohibited in the ordinary course of business except during such period as the Registrar may prescribe Also the following rules governing transfer of shares and reduction of capital —

(1) Shares held by individuals in a central bank shall not without the sanction of the Board of Directors be transferable except to nominees heirs and legal representa tives of such individuals

(2) Such shares shall not be withdrawable

(3) Shares held by societies in a central bank shall not be withdrawable or transferable except when a society is dissolved or when it is affiliated to another central bank in which latter case the shares shall be transferred to such central bank No withdrawal or transfer shall be permitted unless the shareholder has paid up the entire dues of the central bank

Provided that in the case of re organisation of a share holding society into two or more societies the central bank may in consultation with the Registrar allow the transfer of such proportion of the shares held by the original society to the new societies as is considered suitable

(4) No central bank shall buy its own shares unless a simultaneous reduction of subscribed share-capital is effected and sanctioned in the manner hereafter provided.

(5) A central bank may by a resolution passed at a general meeting specially convened for the purpose, reduce its share-capital in any way and, in particular, may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share-capital not paid up; or

(*b*) cancel any paid-up share-capital; or

(*c*) pay back any paid-up share-capital which is in excess of the wants of the central bank:

Provided that, except in the case of withdrawal or transfer permitted under clause (3) of this rule, the share-capital represented by the shares held by Co-operative Societies shall not be reduced unless the share-capital held by individuals is totally extinguished.

(6) A special resolution passed by a general meeting for the reduction of share-capital shall be subject to the confirmation of the Registrar.

(7) The Registrar may direct the central bank desiring to reduce its share-capital to issue a notice by registered post to every creditor, who shall be entitled to object to the reduction within one month from the date of the receipt of such notice.

(8) If a creditor does not consent to the reduction of the share-capital, the Registrar may dispense with the consent of that creditor, on the central bank securing payment of his debt or claim within a time specified by him.

(9) The Registrar, if satisfied with respect to every creditor of such bank who has objected to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as he thinks fit.

(10) The resolution for the reduction of share-capital shall take effect from the date on which it is confirmed by the Registrar.

The Seventh Conference (1913) thought that a rule was desirable to define the classes of documents in a Registrar's office which the public have a right to inspect and to prescribe fees for the supply of certified copies of such documents (*cf.* notes to secs. 25 and 26).

The United Provinces and Punjab have the following —

(*i*) Any member of the public shall be permitted on payment of a fee of one rupee for each occasion of inspecting to inspect for any lawful purpose any public documents (exclusive of documents privileged under secs 123 124 129 and 131 of the Indian Evidence Act 1872) filed in the office of the Registrar Co operative Societies in particular of the following documents namely —

(1) Registration register (Bombay has applica tions for registration)

(2) Registration certificate of a society

(3) The registered by laws of society and amend ments effected in such by laws

(4) An order cancelling the registration of such a society

(5) An order directing the liquidation of such a society

(6) The annual accounts of a society (Bombay has audit memo of a registered society')

For certified copies the fees are Rs 3 for a registra tion certificate and two annas for each hundred words of other documents

Bombay had a rule no society may take any action which would involve the society in the discussion or propa gation of controversial opinions of a political or religious character and the Registrar may prohibit any action or rescind any resolution which in his opinion is of such tendency The reference to political matters has now been omitted Burma is more delicate its rule runs —The Registrar may rescind (and order to be deleted in the records of the society) any resolution or action of an officer or a committee of a society or of a society which is in his opinion outside the objects and scope of the society as defined in the by laws of the society and may order the record of such resolution or act to be deleted in the records of the society

Rules might be made (*cf* sec 19 Industrial and Provident Societies Act) that no registered society with limited liability which has any withdrawable share capital shall carry on the business of banking and no such society shall make any payment of withdrawable capital while any claim due on account of a deposit is unsatisfied

The United Provinces rule permitting both bonus and dividend in societies for production and distribution is given on page 155.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

(*a*) subject to the provisions of section 5 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

German Act: "In societies with unlimited liability, members may only hold one share." The absence of such a rule is fraught with risk (Nicholson). "In these societies, the share is primarily a means: (*a*) of compelling thrift: (*b*) of providing the guarantee of the member which, in these unlimited societies, extends to the whole of his property and of thereby obtaining credit: it is not intended, except secondarily, as a means of furnishing funds directly, still less as an investment by the members as is the case in an ordinary joint-stock company; hence the present limitation, the holding of a single share renders the holder responsible in all his property, and the holding of other shares would, therefore, not increase the guarantee offered by him while it might give him an undue preponderance in the society."

But in practice, the subscription of additional shares (on which no dividend or a small one is paid) strengthens the financial position of the society, protects the unlimited liability and assists in its ultimate abolition by hastening the collection of sufficient owned funds to meet the needs of the members.

Such rules may be necessary to preserve the benefits of the society for persons of limited means (*cf.* preamble and notes) and to deter persons of ample means from securing any undue share of influence especially where the rule of one man one vote is not observed. In the Punjab, the maximum number is one-fifth of the whole, whether the liability be limited or unlimited. In Bengal, Burma and Assam, this maximum applies to societies with limited liability only. The contributions to share-capital represent the paid-up portion of the liability.

(*b*) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the

procedure in the matter of such applications,

All provinces seem to have prescribed forms, the main requirements are —

(1) Name of proposed society [see note to sec 43 (*c*)]
(2) Registered address with nearest Post Office (sec 15)
(3) Kind of liability, whether limited or unlimited (sec 4)
(4) Adherence to the proposed by laws [sec 8 (3)]
(5) Formal application to be registered [sec 8 (1)]

Some add —

(6) Language in which the books and accounts will be kept

Other details, required in some provinces, are usually contained in the by laws, which accompany the application

All require the applicants to sign or attest [sec 8 (2) (*a*)], except in the case provided for in section 8 (2) (*b*)

Section 8 (3) requires one copy of the by-laws to be submitted Most rules require two copies one of which is usually returned certified as duly registered [*cf* sec 11 (3)] Bengal requires a third copy, which is sent to the Central Bank to which the society is to be affiliated

The Registrar should issue a certificate of registration (*cf* sec 10) to the society, and apparently always does so

Bengal, Bombay and Burma, etc, prescribe that in every case in which the Registrar refuses to register a society, he shall record in writing the reasons for his refusal and shall communicate his decision to the applicants The Madras Act seems to require that an order refusing to register shall be communicated by registered post

The Committee on Co operation advocate full enquiry into all applications and regard it as necessary that the Registrar should be able to ascertain —

(1) Whether the proposed members have really assimilated the principles of co operation,
(2) Whether they appear to be too involved in debt to make a society successful (and for this purpose a statement showing, though not in great detail, the assets and liabilities of intending members should be submitted),

(3) Whether adequate working capital is available in the movement;

(4) Whether the applicants are men of good character and the village as a whole free from the taint of litigiousness; and

(5) Whether means are at hand to provide for the necessary supervision of the society when formed.

Enquiry should also be made as to the suitability of the proposed Secretary and Committee.

(*c*) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering, and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration, or abrogation;

Abrogate: repeal or rescind.

The Act does not confer powers upon a registered society to make by-laws. It must have them before registration [sec. 8 (3)] and may amend them (sec. 11).

In most Acts, by-laws upon certain points are compulsory; but matters dealt with in the Act in some countries are left to by-laws in others. The Indian Act requires by-laws only upon (1) area, (2) tribe, caste or occupation of members, and (3) registered address (secs. 6 and 15), but presumably the object (sec. 4) must also be specified. It is thus left to rules under this clause to impose compulsory by-laws, and generally speaking deficiencies have in all provinces been made good by rules under succeeding clauses.

As membership is the very essence of a society, it is obviously necessary to have by-laws governing the terms of admission, withdrawal and expulsion of members and in most countries the law insists on these.

Most Acts impose a long list of matters upon which by-laws must be framed, unless these are dealt with in the Act itself. In some countries model by-laws are annexed to the Act.

Most Local Governments have issued rules for compulsory by-laws on the following points:—

(1) Name—see note below.

(2) Address (sec. 15). Bombay requires the addresses of branches also.

(3) Objects for which the society is established. The whole of the objects must be set forth and they must be in conformity with section 4.

(4) Area of its operations or area of membership. Bombay requires the tribe, class, caste or occupation of members if the membership is proposed to be so restricted.

(5) Purposes to which its funds may be applied (which must be such as are requisite for carrying out the objects).

(6) Qualifications required for membership and terms for admission of members, etc. [*cf.* clause (*d*) of this section and sec. 12].

(7) Rights and liabilities of membership [see secs. 4 and 12]. Madras insists on the insertion of any fines which members may be liable to.

(8) Withdrawal and expulsion of members [see clause (*m*) below].

(9) Payments to be made on withdrawal, expulsion, ineligibility or death of members [see clauses (*m*) and (*n*) below].

(10) Transfer of share or interest of a member [see sec. 14].

(11) The manner in which capital may be raised [see clause (*e*) below].

(12) The mode of summoning and holding meetings, the right of voting, etc. [see clause (*f*) below].

(13) The manner of making, altering and abrogating by-laws [see sec. 11 and the wording of this clause above].

(14) The mode of appointment and removal of a Committee and of its officers (if any) and the powers and duties of the Committee and such officers [see clause (*g*) below].

(15) The mode of custody and of investment of the funds [see sec. 32].

(16) The mode of keeping the accounts [see clause (*h*) below].

(17) In credit societies, the conditions on which loans may be granted to members, including:—

(*a*) the rate of interest;

(*b*) the maximum loan admissible to a member;

(*c*) extensions and renewals;

(*d*) recovery of loans;

(*e*) the purposes for which the loans may be granted; and

(*f*) security for re-payment [see clause (*o*)].

(18) The consequences of default in payment of any sum due by a member.

(19) The settlement of disputes [see clause (*l*)].

(20) Disposal of profits including (*a*) maximum rate of dividend, and (*b*) formation and use of a reserve fund [see clauses (*p*) and (*r*) below and sec. 33].

(21) The authorisation of an officer or of officers to sign documents on behalf of the society.

To this list there should be added :—

(22) The inspection of the books of the society by every member having an interest in its funds, and

(23) The supply of copies of the by-laws and of the annual balance-sheet to members.

Burma and Bengal *add :* a society may make by-laws on....the imposition of fines and forfeitures on members. Madras simply insists that if a member is liable to fines, this shall be mentioned in the by-laws.

Most of these matters will be discussed in the notes under the following clauses of this section. A few points may conveniently be noted here.

(1) The *name* must not be identical with that under which any other existing society is registered, or so nearly resembling that names as to be likely, in the opinion of the Registrar, to deceive the members of the public as to its nature or identity. A registered society may, by special resolution, change its name with the approval of the Registrar (it would be an amendment of a by-law, sec. 11); a society must not be registered under a name likely to disguise its real character, e.g., a society whose chief business is credit should not register as a stores society.

In England (Industrial and Provident Societies Act, sec. 66), it is an offence for a Society to use any abbreviation of its name on any stationery, bill-head, seal, etc. In India this applies to registered companies (sec. 73 of the Act). The power of deciding as to the name lies with the Registrar in the first instance, subject to an appeal against his refusal to register. The Court will not order registration if the

opinion of the Registrar is genuine.[1] The laws of New York State, British Columbia, etc., insist that the words "Co-operative" and "Association" shall be included in the names of all Co-operative agricultural, dairy and horticultural associations, while all productive societies shall affix or prefix such word or words to their names as will indicate that they are co-operative. The Acts of South Africa, Manitoba, etc., also insist on the word "co-operative" being part of the name.

(2) *Meetings:* the German Act requires by-laws dealing with regulations for summoning general meetings, authentication of resolutions and chairmanship of meetings, and whether in general meetings certain matters (e.g., expulsion of a member, adoption of new by-laws) must be decided not by a simple majority, but only by a larger majority of votes.

(3) In amending by-laws, a society may be asked to submit when necessary:—

(*a*) A copy of the existing rules marked so as to show where the alterations occur and what they are.

(*b*) Two copies of the amendment signed by officers of the society.

(*c*) A statement that the amendment was adopted by a majority at a general meeting of the society at which a certain minimum proportion of the members was present. The actual proportion required depends upon whether the liability of the members is limited or unlimited. In the former case, a smaller proportion may be allowed without risk. In the Punjab, for instance, in the case of societies with limited liability, model by-laws or amendments previously approved by the Registrar may be adopted by a majority consisting of two-thirds of the members present at a general meeting of which due notice of the intention to discuss such model by-laws or amendments has been given. In other cases two-thirds of the members must be present. In some countries, the majority is prescribed by law.[2] Bombay has issued rules:—

By-laws may be made, altered or abrogated by a resolution passed at a general meeting of the society; provided that—

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[1] Fuller, pp. 41-42.

[2] The New York State law requires a three-fourths vote in the case of productive societies with capital stock, and two-thirds of all the members in the case of an agricultural, dairy or horticultural society with no capital stock.

(1) due notice of any proposal to make, alter or abrogate the by-laws is given in accordance with the by-laws;

(2) the resolution is passed by not less than two-thirds of the members present at the general meeting at which a quorum shall be present, or at an adjourned general meeting (at which if a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall form a quorum) and a copy of the resolution is forwarded to the Registrar within a period of three months from the date of the meeting. A copy of the existing by-law or by-laws, so marked as to show the alterations proposed to be made, and three copies of the proposed amendments signed by the officers of the society, shall be attached to the copy of the resolution; and

(3) the making, alteration or abrogation of the by-laws is approved and registered by the Registrar.

In Bengal, ordinarily half the members must be present, of whom two-thirds must vote for the amendment, but the Registrar may register an amendment passed by two-thirds of those present (even though less than one half of the whole) if he considers that the amendment is in the interests of the society, and is likely to meet with the approval of the general body of members. Bihar and Orissa has a similar rule, but the Registrar must record his reasons in writing for believing that it is *impossible*[1] for the society to secure the attendance of half the total number of members at a general meeting. Burma, in the case of non-agricultural societies, allows the by-laws to be amended by a vote of 75 per cent. of the members present, when one-quarter of the members, or 100 members whichever is less, are present. In the United Provinces, the majority required is two-thirds, but the quorum is two-thirds in societies with unlimited liability and one-third of the total number of members where the liability is limited. In amending its by-laws a society must strictly observe its existing by-laws as to general meeting, majority required, previous notice, etc. It has been ruled that if any defect in the procedure renders the amended by-laws invalid, then the former by-laws must be considered in force. This might give rise to trouble if the amendment concerned the disposition of funds.

(4) *Consequences of default:* it must be remembered that if a society desires to impose any fines or forfeitures on members and to exact any penalty for non-payment of

[1] Assam says 'impracticable.'

share instalments, etc., it must provide for this in its by-laws for no fines or other punishments can be inflicted except by virtue of a by-law.

In England, the provision for the inspection of books by every person having an interest in the funds (except the loan and deposit account of another member) is regarded as of such importance that failure to allow inspection is an offence (*cf.* sec. 16 of this Act).

(*d*) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership ;

It is an essential characteristic of a Co-operative Society, that it should be open to all fully qualified persons ; therefore, a society must state clearly the terms of admission of members, entrance fees, minimum age, and other qualifications[1] [see clause (*q*) below). The rules or by-laws should also make clear the terms on which societies may become members.

The South Africa Co-operative Agricultural Societies Act prescribes that only persons carrying on farming operations in the colony shall be qualified to be members.

See sections 2 (*c*), 6, 12 and 14 and notes thereunder. As only members can hold shares, the Local Government can prescribe conditions relating to shareholders, e.g., that they must be over 18 years of age. Similarly as members have to be admitted, rules regarding admission may be framed to restrict transfer of shares.[2]

In the former Act, section 4 confined membership to persons above the age of 18 years but this is not reproduced

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[1] 'It is best for the society to impose qualifications for membership since the resulting homogeneity assures harmonious action.' Herrick, p. 462. According to a writer in 'Better Business' (November, 1920, p. 9), in Serbia, the members of the society must be approved by the District Judge.

[2] 'The European Co-operative Societies are very rigid in the matter of excluding all who are not really of them.' They will not allow anybody to join with any interest except the interests of the society. Only persons can co-operate who have something to co-operate for that is common to all in the society. (American Commission,—Observations, Part I, p. 20. *Cf.* also Powell, pp. 25-26).

in the present Act and the question of admitting minors is left to rules and by-laws. These must prescribe the minimum age of members. The Sixth Conference considered that minors should not necessarily be debarred from becoming members of societies when they were heirs of deceased members (sec. 22); usually the by-laws exclude minors; their admission is not illegal but is objectionable as they cannot incur unlimited liability, and liability could not be enforced against them, even on winding-up whether the society be limited or unlimited. Both Schülze-Delitzsch and Raiffeisen excluded minors. They could not be held bound by any rule of unconditional adherence (see below) and generally they would be a source of weakness to the society. The general rule should be to exclude minors.

Similar objections apply to persons mentally disabled from entering into a contract and in some Provinces persons of unsound mind are excluded. Assam, definitely prohibits from membership anyone who is legally or mentally disabled or who is a bankrupt or against whom a conviction stands of a grave criminal offence. Any person found to be so disqualified shall be removed from the society.

It is a strict Raiffeisen rule that a member of a society with unlimited liability should not be admitted into a second similar society [see clause (*m*) below] and this is the rule in most Indian provinces, as well as in Ireland, Italy and elsewhere. Bengal has a rule that no person who has within two years ceased to be a member of a society with unlimited liability can join another without the special permission of the Registrar. This refinement is apparently based on section 23.

The society has power to impose any stipulation that does not involve a direct illegality: it may impose, for example, the profession of a particular religion. The society's power of rejecting candidates is absolute: and the society need assign no reason for its action. It is necessary that a society have power to reject without explanation candidates who, with all the statutory qualifications, seem to them to have failings of temperament or intellect, which it would be sometimes impossible, and always invidious to formulate.[1]

Unconditional adherence.—Both the English Acts provide that the rules of (co-operative) societies shall bind the society and the members thereof, and all persons

[1] Fay, Co-operation at Home and Abroad, 2nd Edn., p. 366.

claiming through them respectively, to the same extent, as if each member had subscribed his name and affixed his seal thereto, and there were in the rules contained a covenant on the part of himself, his heirs, executors and administrators to conform to the rules [1]

In Germany, members must sign a declaration of unconditional adherence, if the Committee approve, this has to be registered and then he acquires membership The United Provinces have a rule —Every person, before being admitted to the membership of a society, shall sign a declaration that he will be bound by the existing by-laws of the society, and by any modification of, or addition to, such by-laws that may be legally effected during the period of his membership A person, who is already a member by reason of his having joined the application for the registration of the society, shall be required, under pain of expulsion if he refuses, to sign such declaration within one month of registration

The model regulations appended to the South African Act, contain a clause regarding unconditional adherence and "any society shall have the power to impose fines on its members for any infringement of its regulations, the conditions and circumstances under which such fines may be imposed and the amount thereof, shall be prescribed by the regulations of the society"

Full disclosure of existing debts ought to be regarded as necessary preliminary to admission The Government of India remarked that until a member has been freed from outside debts, a society is not performing its full functions but it is a counsel of perfection to expect that no one shall be admitted as a member unless and until his outside debts

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[1] *Cf* Powell p 29 It is fundamental that the members of a farmer s co operative organisation be held together by a contract or agreement or by a binding provision in the by laws to be signed by every member The success of the co operative movement depends, in the final analysis on the steadfastness and co operation of the members Their support must be in the nature of a strong conviction that the co operative principle as a business system is right, and this faith and loyalty must be large enough to hold them together in the face of temporary adversity or of the insidious efforts of the opponents of the co operative method to disrupt the system As a business precaution a contract or agreement between the association and its members is essential to the development of a stable co operative enterprise Unless otherwise provided the agreement should give the association the exclusive right to handle the products of its members or exclusively to supervise or execute or regulate such functions for the members as it is organised to perform The membership agreement is the foundation stone on which the stability of a farmer s co operative business association is reared

have been paid off. There are, of course, extreme cases in which a man is so indebted that there is no hope of his debts ever being cleared off and in such a case the proper course is to refuse him admission to the society.

It may, perhaps, be unnecessary to point out that the unlimited liability of such a man is of no value.

Ascertainment of debts of members.—The suggestion that societies should be given power to call upon creditors to state their claims against members within a specified period and that claims not filed within this period should be deemed to have been met (*cf.* Court of Wards Acts) has been debated for a long time. Modern opinion favours the view that a society should not make such a demand unless it is prepared to guarantee repayment and is not prepared to recommend that such power be given.

Women are not usually excluded by any rules or by-laws but the unlimited liability of a woman, especially a married woman or a widow under customary law, is of doubtful value and societies should be cautious in admitting them. There seems to be no objection in the case of a limited liability society with fully paid-up shares.

It ought to be perfectly clear that in the principles of co-operation there is nothing whatever opposed to the admission of women as members. The objection arises from the general custom or law.

A Joint-Stock Company in Bengal is prohibited by rule from being a member of a registered society, without the permission of the Registrar.

This should be general. It cannot have a proxy and cannot attend a general meeting.

Resort to money-lenders should not be prohibited, but it should be laid down that the Committee must be duly informed on every occasion when loans are taken from sources outside the society. A member who becomes heavily indebted to money-lenders reduces the value of his unlimited liability to the society.

(*e*) regulate the manner in which funds may be raised by means of shares or debentures or otherwise[1];

[1] From the Report on the Finance, Administration, etc., of Egypt for 1920, it appears that a proposal was put forward and supported that a super-tax be imposed on landed property in order to provide funds for financing Co-operative Societies.

Shares —The Act itself is silent on the subject whether shares are necessary or not in a credit society In co-operative laws, it is usual to find regulations relating to the maximum and minimum amount of share capital, the value of a share, when shares may be issued, limits on individual holdings, and restrictions on transfer In most Co operative Societies shares are not necessary but are useful as representing a paid up part of the members' liability which inspires confidence in outsiders The German Act now insists on shares but only requires one tenth to be paid up, and as it fixes no minimum, many societies adopt a ten anna share with one anna paid up Raiffeisen regarded shares as unnecessary and as leading to a desire for high dividends, and experience has not found him at fault But where shares are paid in instalments spread over a period of years they serve to promote thrift In such cases it may sometimes be advisable to maintain the encouragement to thrift by raising the value of the shares as the society grows older In Belgium shares are compulsory, so also in Italy

In the share system general in the Punjab and other provinces the cumulative effect of small contributions to share capital, spread over ten years, is remarkable and disproves the opinions of Raiffeisen and Wolff, that these do not add appreciably to the security of the bank In Burma, where most of the capital is provided by deposits of European non members the withdrawal of these deposits involved the movement in difficulties The Russian law forbids societies, without share capital, to receive deposits from outside sources The result was that the Raiffeisen societies practically all disappeared as soon as they were, by this means, deprived of their main source of outside capital The members themselves were too poor to make deposits in sufficient volume for their operations Consequently the peasantry were left without a credit system of their own [1] Where the societies insisted on the formation of a share-capital, even when paid up in several annual instalments, it was found that they attracted only a minority of the agricultural population, and remained inaccessible to the great mass of the peasants [2] Dupernex included the absence of any paid up capital as one of the essential attributes of a

[1] Herrick p 397

American Evidence Russia p 237 It is rather difficult to believe this A similar charge has been made by non co operators against the Punjab system in spite of the fact that village menials freely join some societies There must be something very wrong with a man who cannot save one rupee a year

village bank[1], but some laws, as that of Belgium,[2] require all Co-operative Societies to have a capital. In some cases, share-capital is essential where liability is limited, and not when it is unlimited.

A share is an interest in the society measured by a sum of money; it denotes both rights and liabilities. The *right to a dividend is too readily recognised* and in Co-operative Societies, this right should be rigorously restricted to a fair interest on capital. Its liability to serve as security for outsiders' claim is less readily appreciated. The share itself is moveable property belonging to the shareholder and transferable by him subject to the restrictions imposed by the Act, rules, and by-laws. The money value of the share, however, belongs to the society. The price which the shareholder paid is not his. Obviously he cannot have both the share and its price. The sum paid up forms the society's capital, it *forms a guarantee for depositors*, as it is the immediate security for debts. It accordingly cannot be reduced without warning to the creditors. The value of shares cannot be reduced except by reconstruction involving provision for all existing debts (as in liquidation). Similarly sums paid up on shares should not be repaid while membership lasts except from a special Share Transfer Fund built up from undistributed profits. Where shares represent the sole liability (as in limited liability societies), they must not be withdrawable. They belong to the society and its creditors and no member has any right to reduce the security offered to the creditors. It would be well if the rules rendered all shares in limited liability societies non-withdrawable so long as there were any deposits or claims payable to non-members. In England, the Act prohibits withdrawable shares in limited liability credit societies.

One objection to share-capital in village banks used to be the tendency to impose on new members the condition of paying up all arrears with interest.[3] This is now obviated by a by-law permitting new members to pay up shares in ten annual instalments from the date of admission.

Reserve.—Capital may be built up from profits. The Committee on Co-operation (para. 43) were of opinion that

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[1] Peoples' Banks for Northern India, pp. 171-172.

[2] Rountree, p. 248 note.

[3] *Cf.* Herrick, p. 350:—'In Luzatti societies, the value of the share, and the size of the entrance fee for new members is determined each year and depends upon the amount of paid-in capital and reserves, the larger and older banks as a rule being the more expensive to join.'

the prime object of every society should be to acquire a permanent capital of its own as speedily as possible The best method is to arrange for a wide margin between the rates of interest at which societies borrow and lend, thus securing a substantial annual profit (apparently surplus was intended) to be carried to reserve They saw no objection to arriving at an accumulation of owned capital by the route of a share system rather than by that of a reserve fund, provided that shares are not made an excuse for dividend hunting They did not recommend shares exceeding Rs 50 as these might deter the poorer people from joining

Deposits —Besides shares and surplus interest, a society may raise funds from deposits (or loans) from members and non members[1] Members have a right to deposit their surplus money at interest with the society, in so far as the means for the employment of the same exists, and a Local Government could not issue a rule prohibiting say, savings deposits, on the ground that the societies were competing with the Post Office Savings Banks The Madras Act, however (section 33), appears to give the Local Government power to make rules regulating the receipt of deposits from members The House of Lords Committee thought there might be a risk in credit societies tempting depositors by offering interest in excess of what is given by the Savings Banks, which would be more than the society could properly earn, but, as Mr Wolff pointed out, as the societies found more lucrative employment for their money than the Post Office, they could allow a little more One member of the Committee seemed inclined to favour a rule limiting interest on deposits to the Post Office rate[2] The Raiffeisen model articles provide for this right which entails upon the society the duty of giving preference to deposits from members over those from non members (see notes to Preamble—Promotion of Thrift, secs 4, 12 and 30) The Post Office Savings Banks are frequently mentioned in literature under this head Mr Strickland found that, in Holland, a Royal Commission in 1906 recommended that the funds of these Banks be placed at the

[1] Subject to section 30

This competition for savings deposits is not confined to any one country Agriculture needs capital which joint stock banks are not well suited to provide Sir Horace Plunkett and writers in other countries urge that the savings of agriculturists should be made available for agriculturists and not taken away to the towns The argument is unanswerable but the Government cannot dispense with the help of the Post Office Savings

disposal of co-operative banks, but the surplus of deposits has removed the need; also that in Belgium, a law of 1894 made the funds of these Savings Banks available for rural co-operative credit societies, through the guarantee of a Central Bank. Mr. Rothfeld writes that under the new French law all kinds of agricultural co-operative societies, whether credit or non-credit, can obtain long-term loans from Government funds. All credit societies can open current accounts, provided they have fluid resources equal to the total of their current deposits.

Bombay has a rule: Agricultural credit societies shall not accept deposits which are not fixed for a period of at least two months, except savings deposits in such societies as have made in their by-laws provision for the encouragement of thrift among their members by the opening of savings accounts.

Members' deposit accounts should be kept confidential. The Committee on Co-operation write that as the bank's declared object is quite as much to promote thrift as to facilitate credit, the main source of cash should be savings deposits (of members); these make the bank independent and also attract the interest of the depositors to the employment of their deposits. It should be the aim of primary societies to get as much in the way of local deposits as they can.[1] Deposits should be strictly confined to men with local interests. In order to tempt members to deposit it is justifiable to offer slightly higher rates on their deposits than on those of non-members, the maximum being the rate charged by the society on its loans (Report, paras. 48 and 49).[2] Apparently no rule could be framed restricting deposits

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[1] *Local deposits possess a moral element which loans from a Central Bank do not have*; see for instance Better Business, February, 1917:—'the members of a credit society are more likely to understand the binding nature of a loan, when it is to their own neighbours than to an impersonal institution.' The Madras Committee recommended that in primary societies all possible steps should be taken to encourage local deposits in primary societies. Local deposits are governed by knowledge of the working of a society, and pressure to pay at inconvenient times is unlikely. Deposits from outside the locality should be discouraged.

[2] The Committee on Rural Credit in Ireland found that security is much more influential than the rate of interest in attracting deposits. It is worth noting that the Irish Joint-Stock Banks, in agreeing to allow overdrafts at 4 per cent., stipulated that the local credit societies should not take deposits (*cf.* Pratt, Small Holders, p. 169). But the writers of Rural Reconstruction in Ireland say (p. 141):—It is to the credit of these banks that they soon realised that there was little or no competition threatened, and that the credit societies would actually help them by borrowing money in comparatively large sums and taking charge of the dangerous and tedious task of distributing it in very small loans.

from members[1] and it is doubtful if a Local Government could frame a rule restricting deposits from non-members if the by-laws permitted this without restriction. But see the Madras Act (section 33) which confers such power on the Local Government (*cf.* notes to section 30 *ante*). Ordinarily, of course, the difficulty arising from the alternative offered by section 30 (rules or by-laws) would be met by the Registrar refusing to register a by-law that was not in conformity with the rules. Central Banks depend largely upon deposits from non-members. The present practice is embodied in the following rule of one province :—All Co-operative Central Banks and Urban Societies with limited liability which accept deposits from non-members shall make provision for fluid resources in such manner and according to such standard as may from time to time be prescribed by the Registrar in each individual case. In the United Provinces the scale of fluid resource is rigidly fixed by rule. Madras requires the standard to be prescribed by Government.

In the Central Provinces the present practice is to disallow absolutely the acceptance of deposits from non-members, until the Registrar accords sanction.

Opinion seems to be unanimous that in the ordinary village credit society current accounts should be forbidden. In Urban banks they may be allowed under suitable safeguards. Some Central Banks accept current accounts ; the Madras Committee found that they earn little or no profit on these transactions and run considerable risk in taking large sums at considerable rates of interest. Further, they proceed, the maintenance of current accounts requires a knowledge of the law and practice relating to cheques, etc., which neither the Central Banks nor the department usually command.

Maximum liability.—Cf. notes to sections 4 and 30. Most Provinces have a rule : Every society of unlimited liability shall from time to time fix in general meeting the maximum liability it may incur in loans from non-members. The maximum so fixed, shall be subject to the sanction of the Registrar, who may reduce it. (Bombay adds :—For reasons to be communicated by him to the society in writing, and may prescribe a period, not being less than four months, within which the society shall comply with his orders.) No such society may receive any loan from non-members

[1] But Assam has issued such a rule.

which will make its total liabilities to non-members exceed the limit sanctioned by the Registrar.[1]

The 1926 Conference of Registrars refused to go further than this.

Bombay has a rule:—No society with limited liability shall incur total liabilities exceeding eight times the total of its paid-up capital and its accumulated reserve fund. In Bengal and Madras the limit is ten times the sum of the share-capital and the reserve fund for the time being. In Madras the Committee opposed any further increase. The Madras Provincial Bank may, however, borrow up to twelve times the sum of its capital plus reserve.

Nowadays, wider experience and a better knowledge of the principles of sound credit justify elasticity in well managed banks. Where there is a low maximum dividend, the outside liabilities may be 10, or even 12, times the owned capital (paid-up share-capital plus reserves of all kinds).

Burma makes societies fix the maximum indebtedness to members as well as to non-members. In Madras the by-laws of all primary societies lay down that the maximum borrowing power may not exceed a certain figure, which is, as a rule, not more than one-eighth of the total assets in land and cattle of all its members.

The Poona Conference (1916) resolved that the credit of a society should be assessed under two heads: (1) for current agricultural needs of its members, and (2) other purposes. The Burma Committee urged that the financing bank should be placed in a position to distinguish between the loan required for normal crop requirements of societies and loans for other purposes such as redemption of old debt and so be able to restrict its lending to the former purpose.

Under the former Act the Local Government could make rules providing for the rate at which interest may be paid on deposits. This provision has been omitted but a rule might still be framed requiring preference to be given to deposits from members or (in the case of a Central Bank) from member-societies.

(*f*) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

[1] *Cf.* Committee's Report, paras. 52 and 59.

See notes to sections 12 and 13. Burma adds the resolutions to be passed at meeting.

The rights which belong to members with regard to the affairs of the society are exercised at the general meeting by resolution of the members present (German Act). There must be by-laws providing for the holding of meetings and as the by-laws must be made in good faith, they must provide for a meeting at least once a year. Unless the by-laws provide for sufficient meetings to enable the business of the society to be effectively carried on, the Registrar should not allow it to be registered. The business transacted should be only such as directly and immediately relates to its objects as declared in the registered rules lest any suspicion be aroused as to what takes place.

The Bombay Act requires an annual general meeting and provides for special general meetings on the requisition of a majority of the Committee, or one-fifth of the members or of the Registrar (see sections 12, 13 and Appendix).

The Madras Act (section 15) says: the Committee may at any time call a general meeting of the society and shall call such a meeting within one month after receipt of a requisition in writing from the Registrar or from a financing bank to which the society is indebted or from such number of members or proportion of the total number of members as may be specified in the by-laws of the society. If a general meeting is not called in accordance with such requisition, the Registrar shall have power to call a general meeting of the society himself. It is an offence if any person wilfully or without any reasonable excuse disobeys any such requisition.

The rules or by-laws should—

(1) fix a quorum; one member cannot form a meeting and a general meeting must not be merely a Committee meeting under another name;

(2) require so many days' notice of the place, day and hour of the meeting and business to be conducted;

(3) prescribe a chairman and a rule for electing a temporary one in his absence;

(4) prescribe rules for voting, including the casting vote of the chairman (*cf.* notes to sec. 13);

(5) contain regulations for proxies of member-societies, e.g., requiring proxies to be deposited before the meeting;

(6) prescribe the business to be placed before a general or a special meeting, for instance

(*a*) annual accounts and balance-sheet;

(*b*) dividend;

(*c*) report of Committee and auditors;

(*d*) election of Committee;

(*e*) total amount of loans and deposits which may be accepted;

(*f*) limits to be observed in the granting of loans to members;

(7) arrange for adjournments, if quorum not present, and subsequent meeting to be held whether quorum be present or not;

(8) provide for a record of all proceedings and their signature by the Chairman;

(9) provide for the summoning of general meetings on the requisition of a prescribed number of members.

At present no Province has issued complete rules but has left these matters to be dealt with in the by-laws. It is usually prescribed that the balance-sheet should be laid before a general meeting once a year, and that the Registrar or any person authorised by him may at any time summon a special general meeting, and specify what matters shall be discussed at it. Such a meeting is, by rule, to have all the powers of a meeting called according to the by-laws. The United Provinces has a rule:—

"Provided that if the requisite quorum cannot be obtained at a meeting of a limited liability society, the Registrar may direct the Secretary to call another meeting and at the same time to inform the members in writing that if a quorum of one-third of the total number of members is not present another meeting will be called at which the required quorum will be reduced to one-fifth."

In Italy the law requires that members shall personally attend whenever possible[1] and it is generally provided by the articles of societies that members failing to attend a general meeting without reasonable excuse are liable to be

[1] Monographs II, p. 130.

fined[1] and in some English and Indian societies there is a similar rule. Attendance may be stimulated by forbidding proxies and by requiring a fairly high proportion of members to be present before a dividend can be declared.

By an amendment of the German Co-operative Law in 1922, all societies with 10,000 members must, and societies with 3,000 members may, hold their general meetings by convoking representatives of areas or sections, instead of individual members in person.[2]

(*g*) provide for the appointment, suspension, and removal of the members of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers ;

The Act does not provide for a Managing Committee[3] so that unless Local Governments issue a rule, one is not legally necessary. However, the existence of one is presumed [*cf.* definition sec. 2 (*b*) and the reference in sec. 22]. In societies which are not incorporated (sec. 18) there must be trustees (as in Friendly Societies Act) or a Committee (as in German Act) to represent the society legally. In Germany, the society obtains rights and accepts obligations through all legal transactions completed in its name by the Committee. In Germany, also there must be a Board of Supervision, whose consent is necessary for any loan granted to a member of the Committee of Management.

Professor Marshall writes that while control by a Committee chosen from amongst the members themselves is undoubtedly a great attraction, possesses considerable educational merit and affords a valuable practical training, it imposes a limit to the progress of the movement into the

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[1] Nicholson.

[2] *Cf.* Dr. Theodor Cassan : Consumers' Co-operative Movement in Germany.

[3] Most other Acts do. *Cf.* New York State law which provides that, in productive societies, there shall be a board of not less than five directors. The directors shall be elected by and from the shareholders.....The officers shall be a president, one or more vice-presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of whom must be a director. In agricultural societies the secretary and treasurer may be non-members.

more intricate realms of business enterprise An army commanded by a Committee has seldom given a good account of itself and many decisions in the course of business require the prompt action of an expert It too often happens that a Committee man vacates office to make way for another in accordance with democratic principle just when he is beginning to get an expert grasp of its work [1] The idea of central banks being controlled by Committees representing borrowing societies is disliked by commercial bankers The Madras Committee recommended caution in the elimination of individual shareholders and that members should be co opted to the Committee who have special knowledge which may prove useful such co opted members would have no votes Under the new Act the Madras Government may frame rules prescribing in the case of a financing bank (*i*) the proportion of individual members to society members in the constitution of its general body or of its Committee and (*ii*) the maximum number of members of its Committee

The Committee must consist of not less than two members where a registered society is a member it may elect a member to the Committee of the larger society

The Committee on Co operation did not advocate supervisory Committees as a suitable feature in the vast majority of agricultural societies In urban areas where the personnel with the requisite qualifications is more freely available they considered such Committees might be more successful Undoubtedly such supervisory Boards are advisable if men can be obtained for them In Germany the maintenance of this Board at full strength is considered so important that Directors and Members of the Committee may be fined for default The main point however as the Committee on Co operation point out is that the Managing Committee should work as a Committee that it should do its work regularly and as a whole and not hand over its responsibilities to one or two active men It is also important that it should not be placed beyond the control of the general meeting

Election of a Committee is usually by nomination and open vote in general meetings and the Bengal rules prescribe this but the English Conference in 1903 advocated the use of the ballot as the system of open voting was not calculated to promote wide selection representative appointments and free choice (Webb)

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[1] Marshall Industry and Trade Bk II Ch VII

It is a mistake to assume that in an association formed on a democratic basis, all members will take an equal share in the management and that therefore the personnel of the Committee should be frequently changed. All members should have equal opportunity to serve, and the members of the Committee should regularly come before a general meeting for re-election or replacement. Co-operation depends for its success on leadership and it would hardly be an exaggeration to say that every outstanding success has been due to some man of striking character.[1] The Committee should, of course, be chosen from amongst the members[2] even if this involves admitting to membership some who have not the same interests as the general body. In Ireland, for instance, it is usual to try to get some persons of more education than the average farmers and, generally speaking, the Protestant or the Catholic clergymen, or the doctor, or national school teacher are members of the Committee.[3] Mr. Wolff does not favour a general election of the whole Committee at the same time, but prefers a partial renewals of the members so as to obviate the possible prospect of an entirely new set coming in.[4]

Disqualifications are usually the following:—

(1) being under the age of 21 years; or

(2) holding office or place of profit under the society; or

(3) holding less than a specified number of shares or having been a member less than a specified time; or

(4) having relatives employed by the society; or

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[1] Every society must look to the more energetic, reliable and experienced of its members to play a leading part in conducting its affairs. The provision of one man one vote, so far from hindering those of outstanding character from coming to the top, is likely to help them to do so, for it removes the likelihood of directors and officers being elected by a favoured few for interested motives. It is probable that in a good Co-operative Society, the president and committee are almost always those who have commended themselves to their fellow-members by their outstanding character.....Practically all conspicuous successes are to be associated with the work of one or two men (Smith Gordon, Co-operation for Farmers, p. 17).

[2] In Italy, as the law aims at facilitating the exchange of mutual services between the society and its members, it requires that the officials be selected from among the members (Monographs, II, p. 129). In India the by-laws provide for this.

[3] *Cf.* evidence of G. Russell before House of Lords Committee.

[4] Co-operation in India, p. 167.

(5) being adjudged insolvent; or

(6) being found lunatic or becoming of unsound mind; or

(7) being concerned or participating in the profits of any contract with the society; or

(8) being punished with imprisonment for a term exceeding six months; or

(9) (in stores societies) failing to purchase a specified amount of goods from the society.

The South African Act says, a director shall vacate his office if he absents himself from four consecutive meetings of the board without its leave.

Illiteracy cannot be a disqualification under present circumstances although complaint has been made that "not infrequently illiterates are chosen as Committee men, a thing which should be absolutely prohibited".[1]

If a member carries on any business similar to that of the society, he is usually held to be disqualified; for instance, a man who does money-lending for his own benefit, should never be made a member of the Committee of a credit society. In Bengal, in industrial societies composed solely of artisans or workmen, a member in receipt of a salary from the society may, with the approval of the Registrar, be a member of the Managing Committee.

Removal of a member of the Committee may be effected for any of the reasons disqualifying him from election and also—

(1) for becoming of unsound mind;

(2) for being adjudged insolvent;

(3) for being imprisoned; and

(4) for failing to attend a sufficient number of meetings.

The Madras Committee considered that every possible step should be taken to protect members of primary societies and others from losses caused by misfeasance, and that, in all cases where proof is forthcoming, proper punishment should be inflicted. It would seem to follow from this that a member of the Committee should be removeable for embezzlement even if he is not convicted. The new Madras Act (section 49) empowers the Registrar under certain

[1] T. W. Russell before House of Lords Committee.

conditions to order a member of the Committee or officer to repay or restore to the society any money or property misappropriated or fraudulently retained or embezzled (*cf.* Appendix).

Powers of Committee consist usually in the exercise of all powers of the society except those reserved for a general meeting subject to any regulations or restrictions duly laid down by the society and its by-laws. The Committee derives its power from the society and is bound by the Act, rules and by-laws. It cannot delegate powers to anyone unless specially authorised to do so by general meeting or by-laws. It cannot exercise any powers except those delegated to it and only to the extent authorised.

Duties of the Committee—

(1) To observe in all their transactions the Acts, rules and by-laws;

(2) to maintain true accounts of money received and expended; and

(3) accounts of the assets and liabilities of the society;

(4) to facilitate the inspection of books by those authorised to see them [*cf.* secs. 16, 17 (3)];

(5) to prepare and present to the general meeting a profit and loss account annually;

(6) in credit societies, to watch that loans are applied to the purpose approved;

(7) to maintain a register of members up to date;

(8) to call a general meeting on the demand of the number of members prescribed for this purpose in the by-laws or rules.[1]

The Committee is bound to observe the limitations imposed by the by-laws or by the resolutions of the general meeting as to the extent of their authority to represent the society. As regards third parties the society appears to be bound by the acts of the Committee, but it may sue them for loss (German Act). Thus in Germany members of the Committee may be fined for carrying on business outside the objects of the society. In France the members of the Committee are personally responsible in case of breach of the provisions of the law or of the by-laws for any damage

[1] In Austria a heavy penalty is imposed for failure to convene such a meeting. In Madras now it is an offence to omit to call a general meeting when legally required to do so.

resulting from such breach (Nicholson). The Committee must exercise the prudence of ordinary men of business, those who neglect their obligations are liable to the society for any loss thereby caused.[1] In accordance with general company law members of the Committee in India would be liable for any loss sustained by the society by any act contrary to the law, rules and by-laws (e.g., making a loan to a non-member contrary to sec. 29), and apparently the society could take proceedings by arbitration against the Committee to recover the loss. The Madras Committee recommended that the members of the Committee should be made personally responsible for the repayment of loans which by their negligence had become time-barred. The Foreign Experts of the Banking Enquiry Committee recommended that it should be prescribed in the Act and by-laws that the members of the Managing Committee and Supervising Board are jointly and severally responsible for credits granted without the requisite care. For the above reasons the duties of the society's officers should be clearly specified so that offences can be brought home [see Appendix[2]].

In Bengal there is a rule that the appointment of a salaried officer in any society shall be subject to such conditions as to qualifications and the furnishing of security as may be prescribed by the Registrar.

In Madras (section 43) power has been given to the Registrar to dissolve a Committee that is not functioning properly, and to appoint a suitable person or persons to manage the affairs of the society for a period not exceeding two years.

> (*h*) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society;

Of the many great services rendered to the country by the co-operative movement the introduction and popularisation of a good system of accounts is, by no means,

[1] In Oregon, U. S. A., the directors must swear to administer the business of the society faithfully.

[2] In the model articles for a company given in the first schedule of the Companies Act, it is clearly prescribed that the business of the company shall be managed by the directors who shall duly comply with the Act.

the least. The mutual confidence of co-operators should not be weakened by a loose system of accounts. Business-like forms should be used at all times. Too much importance cannot be attached to this work.[1]

A register of members and of shares may be prescribed under clause (*k*) below.

Under this clause the minimum requirements in the case of a credit society seem to be—

(1) cash book;

(2) ledger account for each member;

(3) register showing when repayments of loans are due;

(4) register of deposits;

(5) minute book; or, as the United Provinces rules prescribe in more detail, a book of minutes of all resolutions and proceedings of general and special meetings of the society and of meetings of the Committee. Bombay requires two minute books, one for general meetings and one for Committee meetings.

Some Provinces add :—

(6) share transfer register;

(7) interest account;

(8) expenses account;

(9) bank account;

(10) receipt book with forms in duplicate;

(11) liability register showing the indebtedness of each member to the society whether on account of loans taken directly by him or on account of loans for which he stands surety;

(12) (in the case of unlimited liability societies) a statement showing the assets and liabilities of each individual member at the date of admission as well as on the last day of each co-operative year.

The books, if well kept, will in time supply the best evidence of each member's worth as a borrower. The deposit and loans of each member will indicate fairly clearly whether he is progressing towards prosperity or insolvency. Everyone

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[1] *Cf.* Sinclair, p. 59.

will agree with the recommendation of the Madras Committee that the accounts should be as simple as is compatible with clarity. As the Burma Committee explained: It is one of the essentials of a sound credit society that the members should be able to understand the accounts, and in order that this may be a practicable ideal amongst a population not possessed of a high standard of literacy, it is absolutely necessary that the accounts should be of the simplest possible character consistent with clearness.

Audit.—Under the former Act no charge could be made in respect of any audit made by the Registrar. In the Punjab the model by-laws provide that the society shall pay such fee for audit as the Punjab Co-operative Union may from time to time prescribe. The need for a Government rule disappears when a non-official body takes over the work. Bengal requires simply that every registered society shall pay the audit-fee prescribed by Government. The United Provinces have rather elaborate rules. Every society pays an audit-fee calculated in the case of a Central Bank at six annas per hundred rupees of working capital subject to a maximum of Rs. 200, and in other cases, at three and a half annas per hundred rupees subject to a maximum of Rs. 100. The fees are credited into the local Treasuries and the Registrar employs the staff. In Assam the scale is six annas per hundred rupees in the case of primary societies and three annas in the case of a Central Bank. Bombay used to limit the charge to societies of limited liability with a working capital exceeding Rs. 50,000. The latest rules are that societies (not necessarily limited) with working capital exceeding Rs. 50,000 may be required to pay the whole cost of their audit, while other societies may be subjected to a levy of an audit rate not exceeding five-eighths of one per cent. on the working capital. The proceeds go towards the cost of the audit staff. In Bihar and Orissa, the Central Federation realises Rs. 5 per diem, up to a maximum of Rs. 75, from Central Banks and important limited liability societies. For primary agricultural societies, the fee is based on the working capital. No fee seems to be prescribed in other provinces.

In Madras the desirability of charging audit fees was repeatedly considered but all audit was done free of charge as it was decided that societies could not pay for audit if they pay for supervising unions. Government Inspectors audit sixty societies annually. The latest rule prescribes that every society shall pay to Government the charge for

audit according to a scale, unless it has its accounts audited at its own expense by the staff of the federation or by an approved auditor. The scale fixed in 1927-28 was :—

8 annas per one hundred rupees of the working capital for the first 50,000 or part thereof ;
6 „ for the next 50,000 or part thereof ;
4 „ for the next one lakh or part thereof ;
3 „ for the next one lakh ;
2 „ for the next one lakh.

Publication of Balance-Sheet.—A balance-sheet may be defined as a classified summary of the balances remaining in a set of books after those relating to profit and loss have been collected into one account, and including the balance of that account, so arranged as to show the assets and debit-balances on one side and the liabilities and credit-balances on the other. It should set out the true position of the business in such a manner as may be easily understood by men of business intelligence.[1] The laws of England and India agree in requiring periodical publication of balance-sheets by all banking and insurance companies and provident or benefit societies. This has usually to be done twice a year and the balance-sheet must be kept displayed. Every member and every creditor is entitled to a copy (*cf.* Indian Companies Act, sec. 136). The Industrial and Provident Societies Act requires every registered society engaged in banking to make out twice a year and keep conspicuously hung up a statement of capital, assets and liabilities ; and the Friendly Societies Act requires a copy of the last annual balance-sheet to be displayed, together with any special report of the auditors. Every member and every person interested in its funds is entitled on application to receive gratuitously a copy of the last annual return or an audited balance-sheet containing the same particulars. In Germany also the annual balance-sheet must be published.

The usual rule is :—The balance-sheet of each registered society shall be laid before a general meeting of the society once a year. But Bombay requires every society to *publish* its annual balance-sheet. It also insists that the balance-sheet shall be open to the inspection of any member during office hours. Madras says the society shall publish such of the prescribed statements as the Registrar may direct in the manner prescribed by him.

[1] Spicer and Pegler. Practical Auditing, 3rd Edn., p. 403.

Some provinces have a rule :—

No society of which any member is a registered society shall take into consideration any balance-sheet at its annual general meeting or make any distribution of its profits by way of dividend or bonus or otherwise among its members, unless and until the balance-sheet (for the period during which such profits have accrued) shall have been certified to be a true and correct statement of the position of the said society by the Registrar or some person authorised by him in that behalf.

(*i*) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted;

The minimum returns appear to be—

(1) account of income and expenditure;

(2) profit and loss account;

(3) balance-sheet.

Some Provinces merely rule that the societies shall submit such returns as the Registrar may by general or special order prescribe.

The returns should, as far as possible, be submitted by the societies themselves so that they may serve as an object lesson in accountancy. In Madras, Government has taken power to frame rules for the levy of the expenses of preparing any return which a society may fail to submit.

The returns should be audited once, and where the auditor is not appointed by the Registrar, his name should be given.

(*j*) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

Burma and Madras add :—and for the charges to be levied for such copies.

Bankers Books Evidence Act, section 2 (8) runs :—

"Certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books

of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Most provinces have issued a rule embodying the whole or the greater part of this.

The costs of anything done or to be done under an order of a court or judge shall be in his discretion but if costs are awarded to a bank, the bank may recover as if it were a party. (*N.B.*—The bank should always apply for costs if ordered to produce books.) The certificate must be dated and signed by the Secretary of the society or other officer approved by the Registrar (in Punjab, Bihar and Orissa, etc.). Madras prescribes that the copies shall be made by the President or the Secretary and shall be certified by not less than three members of its managing body, including such President or Secretary and shall bear the society's seal. The Central Provinces and United Provinces require a second signature of an officer or member of the Committee ; Bombay allows any officer to certify ; Burma limits this to the Chairman.

(*k*) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;

See section 25 and notes thereunder.

The register of members is essential and its maintenance should be compulsory. Where there are no shares and therefore no share-list, it is the only record. The Bengal rule is simple : The Managing Committee shall keep such books and registers as may be prescribed by the Registrar and in particular shall make and maintain correctly up to date a register of members. The Punjab is more specific : Every society shall maintain a register of members showing :—

(*a*) the name, address and occupation of each member, and a statement of the shares held by him ;

(*b*) the date on which each member's name was entered in the register ;

(*c*) the date on which any person ceased to be a member ;

(*d*) the nominee, if any.

(*l*) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the Committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;

Arbitration means the hearing and determining of a cause between parties in controversy by a person or persons chosen or agreed to by the parties. The determination of arbitrators is called an *award* (Century Dictionary).

At first, Government refused to allow the societies a special summary procedure for the recovery of their debts in place of the slow and expensive methods of the courts. It would, it was thought, be mistaken kindness to confer upon societies arbitrary powers of recovery, and if in the absence of such powers a society cannot by means of the joint-security given and its own moral authority, collect its debts, the failure is due to a careless selection of members in the first instance or to lax management. If individual societies could employ special methods in dealing with their members, they would be encouraged to become careless in administration and to neglect the vital principle that admission should be refused to those who cannot be relied upon to fulfil their obligations.[1]

But some Local Governments have framed rules providing for the enforcement of a Registrar's decision or an arbitrator's award as a decree of a Civil Court. Some Local Government have gone further and have issued rules, under this clause, rendering all sums, recoverable under the

[1] Government of India Resolution; but this and the corresponding clause of the former Act were inserted with the intention of avoiding litigation and the trouble, expense and delay attending it.

Registrar's decision or an award, liable to be collected as an arrear of land-revenue. Burma proposed to incorporate this in the new Act but the proposal was rejected. There is a general consensus of opinion that an award should be executed as a decree; and, if the existing Act does not permit of a rule to this effect, it should be amended so as to permit of such a rule being framed.

The clause follows very much the English law. The Friendly Societies Act directs that disputes *shall* be decided in manner directed by the rules of the society and the decision so given shall be binding and conclusive on all parties without appeal and shall not be removeable into any Court of law or restrainable by injunction; it allows the parties the alternative of referring to the Registrar. The Madras Act includes the provision of compulsory arbitration in the substantive part of the Act and does not leave it to rules (section 51—*cf.* Appendix).

The English Courts have taken a very sensible view of these arbitration proceedings as the following quotation from a ruling will show :—The Legislature intended carefully to provide that these societies should not be dragged before Courts of Law or Equity, if it could possibly be avoided, and has taken care to enact that the whole discussion of their affairs shall be disposed of in a cheap and summary manner by the decision of an arbitrator (or justices) ..... the power of the justice or the arbitrator is complete and is not subject to revision by any Court of Law or Equity. That is the primary matter to which attention must be drawn and it is necessary to be extremely careful that the jurisdiction of this Court shall not be set up to control the arbitrators so selected except upon a very clear and distinct case being made out of their abuse of their office.

A reference to the Indian case-law on arbitration shows that there are so many pitfalls for an arbitrator that a discontented party can always point to some defect to secure interference from the Court.

Although the Committee of Management are not proper parties to determine disputes, there is nothing objectionable in requiring disputes to be in the first instance considered by the Committee with a view to terms being arranged.

In England compulsory arbitration was for long considered impracticable but it was adopted after 1867 and is now common.

In England, and presumably also in India, all moneys payable by a member to the society are deemed to be a debt due from such member and are recoverable as such. This would include calls on shares. In Trades Unions subscriptions generally cannot be sued for in court.

What is a dispute? Ordinarily the word "dispute" includes all matters which could form the subject of civil litigation; and so presumably would include a debt due to a society, payment of which is not made on demand, whether the fact of the sum being due is questioned or not. Most Local Governments seem to have adopted this view and Bombay (section 54) specifically provides that "A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not" and Madras (section 51 (*i*) Explanation) makes similar provision. But it would appear that in Bengal and Burma a debtor has only to admit his debt and he is secured from the arbitration procedure. While if the dispute is sent to arbitration he has only to admit it, and it ceases to be a dispute and the arbitrator cannot deal with it. Opinion seems to be unanimous that if a debt is overdue and the defaulter fails to pay or to show adequate cause for non-payment, he is liable to be proceeded against under the rule of compulsory arbitration, and the sum awarded should be recoverable as a decree. A dispute relating to a debt is none the less a dispute whether the amount is or is not admitted by the borrower when a demand of payment is made and is either refused or not complied with.

Generally disputes, other than those relating to money due, should be referred to the general meeting whose decision should be final; but in the case, for instance, of an expelled member claiming to be re-admitted the matter would more suitably be settled by arbitration.[1]

The Madras Law Journal, March 1923, pp. 382-384 (quoted in Madras Bulletin of Co-operation, April-May 1923, gives a decision by the High Court of Madras wherefrom it appears that—

(1) the words "touching the business of the society" are not confined to disputes regarding the internal

[1] See sub-section (8) of section 68, Friendly Societies Act:—the expression 'dispute' includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member.

management of the affairs of the society or disputes in regard to the principles which would regulate the conduct of business ;

(2) a dispute between a member who happens to be an officer of a society and the society in regard to sums of money entrusted to the former for purchase of certain articles is within this section;

(3) a dispute between a member who happens to be an officer of a society on the one hand and the Committee or an officer on the other falls within the words of this section.

The Allahabad High Court have ruled that any dispute about the election of the officers of a Co-operative Society must be referred to the Registrar. No suit is, therefore, maintainable in a Civil Court for declaration that the defendants' election as Directors of a society is not legal.[1] It was held that the word " business " was not intended to be used in the restricted sense of money business. The election of its officers is certainly a part of the business of the society.

In Civil Appellate Side, Case No. 944 of 1922, *The Zemindar Bank, Sherpur Kalan* v. *Suba*, decided 28th November, 1922, the High Court of Lahore remarked on these rules:—" The principle of law as enunciated in various authorities is that statutes imposing restrictions upon the subjects' right of suit should be strictly construed and such restrictions should not be extended beyond what the words used actually cover. In the present case, however, it appears to us that the words used do clearly contain a necessary implication depriving the subject of his common law right of action and provide a special and prompt procedure for cases in which, having regard to the class of people affected, a speedy decision as to their dispute is essential. It will be observed that the object of the Act is to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, and it will, in our opinion, be impossible to attain these objects if these people for the settlement of their disputes have necessarily to undergo all the troubles and worries of an expensive and protracted litigation. It should further be noted that the English Law on the subject is very much the same.....We think that it would be entirely repugnant to the scope and object of the Act if a suit like this were allowed to be decided in a civil court

[1] All. Law Journal, Vol. XXIII, 1925, p. 129.

and we accordingly hold that by the substitutional remedy provided under the rules in the shape of a reference to the Registrar the common law remedy by an action in a civil court has by necessary implication been taken away

(The suit was for a declaration that bonds said to have been executed by plaintiff were forgeries; the Munsiff threw out the case as barred by the rules; the Lower Appellate Court held that a Civil suit could lie.)

The various Provinces have somewhat different rules. Those in the Punjab seem to be most detailed and may be quoted as an example.

1. Any dispute touching the business of a Co-operative Society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the Committee or any officer, shall be referred to the Registrar. Reference may be made by the Committee, or by the society by resolution in general meeting, or by any party to the dispute, or, if the dispute concern a sum due from a member of the Committee to the society by any member of the society.

For the Bombay Act, see Appendix. Madras specifically excludes a "dispute regarding disciplinary action taken by the society or its Committee against a paid servant of the society" (*cf.* Appendix).

Note.—A "dispute" includes claims on the part of a society for money due to it from its members. This would include an instalment of share-capital but would not include a subscription not authorised by the by-laws.

The Bombay Act has: a dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not.

"Person claiming through a member" includes the heirs, executors or administrators and assigns of a member and also his nominee where nomination is allowed (Industrial and Provident Societies Act). The rules of a society are binding on these persons.

"Shall be referred"—this excludes the jurisdiction of the Civil Courts. If, for instance, a member sues a society for his deposit or share-money or share of profits, etc., the society may plead this rule and so remove the case outside the jurisdiction of the Court and there can be no proceedings for injunction. This, of course, does not apply

to the case of non member depositors or other creditors (non members) who may sue in Court

As criminal courts follow the decisions of civil courts on questions of fact, the compulsory arbitration procedure ending in a final decree serves to reduce opportunities for criminal litigation

The Bombay Act provides that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society (see Appendix)

A dispute as to whether a person was or was not a member of a society would not be included in this rule

Section 28 of the Indian Contract Act (IX of 1872) declares to be void every agreement whereby any party thereto may be restrained from enforcing his right by the usual legal proceedings in the ordinary tribunals But an exception to the section provides that a contract by which two or more persons agree that any dispute, which may arise between them in respect of any subject or class of subjects, shall be referred to arbitration is not illegal Such an agreement may be filed in court and carried into effect It may be an agreement to refer present or future differences The provisions in the Contract Act and the Specific Relief Act amount to this, that if a person, who has contracted to refer to arbitration any dispute that might arise in future between him and another, refused to do so, his contract would be a bar to his maintaining or carrying on a suit in respect of the subject matter of reference [1]

The concluding sentence of this rule is intended to meet the case where a debt is owed by a member of the Committee, and the other members refrain from proceeding against him Most provinces have not yet adopted this device

2 The Registrar may either decide the dispute himself, or appoint an arbitrator, or refer it to three arbitrators, of whom one shall be nominated by each of the parties and the third shall be nominated by the Registrar and shall act as chairman When any party to a dispute fails to nominate a suitable arbitrator within fifteen days,

[1] D C Banerji, Treatise on the Law of Arbitration in India, pp 26 27

the Registrar may make the nomination No legal practitioner may be nominated as arbitrator by any party

Note—The object of securing quick decisions based on equity would obviously be defeated if each party were allowed to nominate a legal practitioner to represent him under the cloak of an arbitrator

Any person, in whom the parties have confidence and to whose decision they may choose to refer their dispute or difference, may be selected to act as an arbitrator, provided he is not prohibited from so acting by an express provision of a Statute or by reasons of public policy Every person is free to choose his own judge for the settlement of any matter in controversy between himself and another, and the judge so chosen, if accepted by the opposite party, is clothed with authority to arbitrate upon the controversy referred to him If the parties choose an incompetent or unfit person, that is their own affair [1] The Madras Act empowers the Registrar to transfer the reference for disposal to any person who has been invested by the Local Government with powers in that behalf

3 In such proceedings the Registrar or arbitrator shall have power to administer oaths, to require the attendance of the parties and witnesses, and require the production of all necessary books and documents by a summons delivered orally or sent by hand or by registered post or through the nearest civil court having jurisdiction in the area in which the society operates, and shall further have power to order the expenses of determining the dispute to be paid either out of the funds of the society or by such party or parties to the dispute as he may think fit

Note—The wording follows that of the Friendly Societies Act The power to administer oaths is already conferred by section 4 of the Oaths Act (X of 1873), but not the power to administer an oath under section 8 as he is not a court [2]

The Evidence Act (see section 1) does not apply to proceedings before an arbitrator, who is not required to comply strictly with the rules laid down in that Act It is not a valid objection to an award that an arbitrator has not acted in strict conformity with rules of evidence [3] At the same time as it is important that awards should carry the

[1] D C Banerji, Treatise on the Law of Arbitration in India, p 152
[2] *Ibid*, p. 212
[3] *Ibid*, p. 195

same weight and command the same respect as judicial decisions, arbitrators should follow the spirit of the Evidence Act.

The costs of the reference and of the arbitration-proceedings shall, unless otherwise provided by the order of reference, be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner these costs shall be paid. A general reference gives the arbitrators exclusive jurisdiction to deal with the costs of the suit. The court cannot order costs to be paid contrary to the award.

Madras, however, has been advised that under the present Act, an arbitrator cannot award costs. Its new Act empowers the Local Government to frame rules providing for the levy of expenses incidental to such proceedings. But if the question of costs is included in the reference, the arbitrator can give an award upon this. In Bombay (1928) provision has been made for the payment of arbitrators according to a moderate scale and for the subsequent recovery of the amount from the defaulting societies and members. The Bombay Act [sec. 71 (*u*)] gives Government power to frame rules for fixing and levying the expenses by determining the dispute. The rule runs: The Registrar or his nominee and the arbitrators shall have power to order the expenses of determining the disputes to be paid out of the funds of the society, or by such party or parties to the dispute as they may think fit, according to a scale laid down by the Registrar. The Registrar may fix the fee to be paid to his nominee out of the expenses so recovered. Arbitrators are paid on the following scale :—

For a claim of Rs. 100 or part thereof. Rs. 2.
" " " between Rs. 100 and Rs. 200....2 per cent.
" " " over Rs. 200..... ....Rs. 4 for the first Rs. 200 and 1 per cent. for every Rs. 100 in excess.

A flat rate of annas eight in each case for clerical expenses and other incidental charges is allowed.

When awards are executed through the Revenue Department, provision is also made for payment to the village officers at a rate of one per cent. of the recoveries actually made by them.

If the arbitrator moves the court to issue process, the court shall thereupon issue process in the same manner as it would issue in suits tried before it. A court may also issue

commission for the examination of any witnesses in the same manner as it would in a trial before itself.[1]

4. The Registrar or arbitrator shall hear the evidence of the parties and witnesses who attend, and, upon that evidence and after consideration of any documentary evidence produced by either side, a decision or award shall be given in accordance with justice, equity and good conscience, and shall be reduced to writing. In the absence of any party duly summoned to attend, the dispute may be decided against him in default. When three arbitrators are appointed, the opinion of the majority shall prevail.

Note :—The arbitrator must not make his award without hearing all the evidence; both sides must be heard in the presence of each other (except in *ex parte* proceedings). The arbitrator should be careful not to examine a party or witness except in the presence of the opposite party.[2] The arbitrator should give notice, that, in the absence of either party on the date and at the place fixed, he will proceed *ex parte*. He may so proceed where one of the parties keeps back his evidence to delay the reference, or will not attend when called upon, with a view to defeat the reference. If upon notice given by the arbitrator, a party does not appear, the arbitrator may proceed *ex parte*. But if he proceeds *ex parte* without sufficient cause, or without giving the party absenting himself clear notice of his intention so to proceed, the award may be avoided.[3]

The award implies an adjudication or decision by the arbitrator upon the matter submitted to him. It need not be a reasoned judicial decision and it need not contain reasons for the decision.[4]

Bombay requires the Registrar or his nominee to record a brief note of the evidence of the parties and witnesses who attend.

5. Any person duly summoned by the Registrar or arbitrator to appear before him or to produce any document and failing to do so shall be liable to the penalties prescribed in paragraph 7 (2) of the second schedule of the Code of Civil Procedure, 1908.

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[1] D. C. Banerji, Treatise on the Law of Arbitration in India, p. 193, ollowing 7 Bom. L. R., 560—1905.

[2] *Ibid.*, p. 220, *cf.* 66 P. R., 1907.

[3] *Ibid.*, p. 195.

[4] *Ibid.*, p. 223.

Note :—This runs as follows: Persons not attending in accordance with such process or making any other default or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments by order of the court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the court.

6. Any party aggrieved by an award of an arbitrator may appeal to the Registrar, in person or by agent, within one month of the date of the award.

Note :—Some provinces provide for an appeal against the decision of the Registrar. Madras is advised that no rule providing for appeals against arbitrators' decisions or awards could legally be framed under this Act. Bombay provides for appeals from arbitrators' awards to the Registrar in its new Act (section 56). Burma did not adopt this. The Madras Committee recommended that the Registrar should have power, either on his own motion or on the application of any party interested, to revise an award, or an order of an arbitrator, in order to rectify obvious errors resulting in injustice or hardship and this has been incorporated in the new Act, section 51 (5).

Arbitrators are final judges, not only of all matters of fact, but also of all matters of law, which arise in the course of the proceedings before them, or which are involved in the decision of the subject-matter of the reference.[1] If an award is regular on the face of it, the court will presume, unless the contrary be proved that everything has been rightly and duly performed.[2] The arbitrator cannot be examined as a witness as to the grounds of his decision; he cannot be examined in respect to those matters which influenced or induced him in arriving at certain decisions; but he may be examined as to matters that passed before him, which would be an admission of parties, and which would assist the court in coming to a right conclusion. He may be called to prove his own mistake or misconduct.[3]

7. An arbitrator's award, if no appeal has been made within a month, or a decision of a Registrar originally or in appeal, shall not, as between the parties to the dispute, be liable to be called in question in any civil or revenue court,

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[1] Banerji, pp. 207-208.

[2] *Ibid.*, p. 242.

[3] *Ibid.*, pp. 162, 164.

and shall be in all respects final and conclusive, except on proof of the receipt of a corrupt gratification by the arbitrator

Note —"on proof," not on the allegation

In a Bombay case (*quoted* in Bombay Co operative Quarterly, March 1923) after an arbitrator had been appointed, during his enquiry, the member defaulting died, the arbitrator brought on record the heirs of the deceased member, and gave an award against them The Appellate Court held that the award was valid and the procedure of the arbitrator perfectly legal The executing court had no power to question the validity of the award it was asked to execute

8 A decision or award shall, on application to any civil court having jurisdiction in the area in which the society operates, be enforced in the same manner as a decree of such court

Note —This rule has now been adopted in most provinces, it is a defence of the principle of arbitration against the rulings of appellate courts which, together, render the whole matter in dispute liable to be called in question on appeal Experience shows that if any loophole is allowed, the intention of preventing these societies from being dragged into court will be frustrated If the other party denies that any award has been given, the award will have to be proved But it is usually sufficient to call upon the party to admit the award (Civil Procedure Code, First Schedule, Order XII, rule 2) The well known reluctance of Committees to take out execution proceedings has been met in Bombay by a rule empowering the Registrar to authorise certain of his officers to call for and send arbitration orders for execution

Madras has a rule —

The decree or award shall be enforced in either of these ways —(*a*) on a requisition to the Collector of the District made by the Registrar of Co operative Societies all sums recoverable under the decision or award shall be recovered in the same manner as arrears of land revenue,

(*b*) on application to the Civil Court as a decree of such court

[15] C
ollowing [7]e-Merwara adopted this in 1922 and the United
[3] *Ibid*, p has now (1927) the same rule In Madras
[3] *Ibid*, p " includes village courts constituted under the
[4] *Ibid*, p re Courts Act

The Bombay Act embodies the principle of the Madras rule in section 59 the order or award may be executed by any civil court or according to the law and under the rules for the recovery of arrears of land revenue A Co operative Society adopted the second course and the collector ordered the detention of the defaulting member in civil prison The latter filed a petition for insolvency and was held protected from imprisonment The Judicial Commissioner of Sind (84 of 1929) held that debts due to Co operative Societies stand on no better footing than ordinary debts and can only be paid *pro rata* with other secured debts It would be an improper exercise of discretion to refuse to grant interim protection to a debtor against arrest or detention for a debt due to the society and to permit his being detained in prison and at the same time to take possession of his property for rateable distribution amongst his creditors merely and solely because the society has chosen the alternative remedy of enforcing the claim by approaching the collector

Collection as an arrear of land revenue may involve the use of village officers so Bombay gives the Registrar power to order the expenses of such recovery to be paid out of the funds of the society or by the party or parties in default This practice of executing decrees through the Revenue staff is said to be throwing a large addition of extra work on to the establishment in Bombay In the Central Provinces the Registrar seems to make sparing use of this power and issues about one hundred or less certificates a year In the United Provinces the Registrar (1930) complained that the fact that tehsildars armed with powers of arrest and attachment collected only 6 per cent of the dues shows the amount of interest taken by them in the world

The Punjab High Court held (2nd Appeal No 690 of 1923 decision dated 17th November 1924) that where one award was not executed and later a second reference to arbitration was made and a second award was given the court was bound under this rule to enforce the award and could not go behind it It could not entertain the plea that the award was invalid owing to the previous one It is to be noted that the Registrar himself has no power to execute his own award and consequently it is not necessary to submit a certificate of non satisfaction with the application for execution

9 In proceedings before the Registrar or an arbitrator no party shall be represented by a legal practitioner

Note —In England, arbitrators may decline to hear counsel Some provinces do not exclude legal practitioners from appearing in an appeal before the Registrar This rule does not exclude legal practitioners from being consulted before reference, or from appearing in execution proceedings

It is worth noting that, under the English practice, where no decision is made in a dispute within forty days after the aggrieved person has made application for the matter to be dealt with under the rules of the society, such person may apply to the county court to determine the dispute [1]

The following paragraphs of the Second Schedule of the Civil Procedure Code (1908) are reproduced here for reference —

Where award or matter referred to arbitration may be remitted

"14 The Court may remit the award or any matter referred to arbitration to the re consideration of the same arbitrator or umpire, upon such terms as it thinks fit—

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration unless such matter can be separated without affecting the determination of the matters referred ,

(*b*) where the award is so indefinite as to be incapable of execution ,

(*c*) where an objection to the legality of the award is apparent upon the face of it

Grounds for setting aside award

"15 (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it But no award shall be set aside except on one of the following grounds, namely —

(*a*) corruption or misconduct of the arbitrator or umpire ,

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ,

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court or being otherwise invalid

[1] See Co operative Union's Industrial and Provident Societies Act, p 55

"(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

"*Arbitration without the intervention of a court.*

"20 (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court. Filing award in matter referred to arbitration without intervention of Court.

"(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

"(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

"21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made therein and where no ground such as is mentioned or referred to in paragraph 14 or 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award. Filing and enforcement of such award.

"(2) Upon the judgement so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess or not in accordance with the award."

(*m*) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;

Burma has altered the latter part to run: provide for the mode in which the value of the share or interest shall be ascertained. Madras adds:—or the estates of deceased members.

Withdrawal.—The right of withdrawal is characteristic of Co-operative Societies. Its importance varies with the liability. In societies of unlimited liability, a member must be able to withdraw before any liability is incurred to which he objects. He is only liable for the debts as they exist at the time he ceases to be a member (sec. 23), and

therefore it is of little use allowing him to retire after so many months' notice. The right to withdraw is thus a very valuable check on carelessness or rashness, but at the same time precautions must be taken to prevent such a wholesale withdrawal of members as would leave the creditors of the society without adequate security. These precautions must be set out in the by-laws and once so set out, they cannot be altered without an alteration of the by-laws which requires the approval of the Registrar. A resolution of a general meeting is, of itself, insufficient. When a man joins a society he should know how he can get out of it. Compulsory retention of membership destroys mutual confidence.[1] In Germany a member has the right to withdraw, he must give three months' notice and the withdrawal takes effect at the end of the business year. If he ceases to reside within the society's area [sec. 6 (1) (*a*)] both sides may insist on withdrawal. The share-value is paid to him but he has no claim on the reserve or other assets and may be made to pay up his share of any deficit; his legal claim to share-capital lapses in two years; if the society is dissolved within six months the withdrawal is null and void.

It has been held that withdrawal here relates only to a direct voluntary withdrawal and not to a cessation of membership as a result of disqualification under the Act.

Payment on withdrawal.—As societies with withdrawable share-capital and limited liability should not carry on the business of banking, these societies should not repay the share-value but should leave the retiring member to transfer to a member. This does not apply with the same force to unlimited liability societies. Mr. Wolff says withdrawable shares encourage people to come in but he would insist on a fair notice and make withdrawal permissible only at the end of the financial year. Section 19 (1) of the Industrial and Provident Societies Act is clear: "No registered society which has any withdrawable share-capital shall carry on the business of banking."

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[1] *Cf.* Co-operation in Finland, p. 70. The law allows Co-operative Societies to bind the members by their rules to remain in the society for a term not exceeding two years. In Belgium and Italy also a society has power to impose membership either for a given number of years or the period of the society's existence. But the general rule is to allow retirement. Membership in a Co-operative Society is a voluntary bond which can be severed at will (*cf.* Fay, Co-operation at Home and Abroad, 2nd Edn., p. 367-8).

Expulsion.—The principle of careful selection of members carries with it the right to expel in order that any one deteriorating in conduct or character and thereby prejudicing the society may be got rid of.

The by-laws should provide that:—

A member may be expelled—

(*i*) if he fails to fulfil his obligations in the matter of dues. (The Schülze-Delitzsch model rules allow only three months' arrears, Raiffeisen rules allow six months. The Burma Committee recommended that whenever it becomes necessary to proceed against a member for default, he should normally be expelled unless he at once makes full repayment);

(*ii*) if he becomes a member of another similar society and refuses to withdraw; this is very necessary in the case of societies for production and sale. In accordance with the policy of publicity, each member has the right to inspect the books of the society and may give away information to a rival society of which he is also a member[1];

(*iii*) if it be found necessary to proceed against him for debt;

(*iv*) if he becomes bankrupt;

(*v*) if he engages in acts contrary to the principles of the society;

(*vi*) if he becomes insane (and so incapable of incurring legal liability);

Italy adds:—

(*vii*) if he be convicted by a criminal court (especially of bribery, forgery, theft, or fraud);

(*viii*) if he shall have committed an act considered dishonourable by the Managing Committee.

Distributive societies usually reserve the right to expel any member who ceases to deal with them or whose purchases fall below a fixed minimum.[2]

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[1] Powell, pp. 43, 44; Herrick, p. 277.

[2] The New York State law on Co-operative, Agricultural, Dairy and Horticultural Societies enacts that any such association may admit as members, persons engaged in agriculture, dairying or horticulture. Any person shall forfeit his membership upon proof being made to the association that he has ceased to be engaged in agriculture, dairying or horticulture.

If a member of an unlimited liability society joins another one and so pledges his liability twice over, he ought to be expelled

Bombay has a clear rule where a person has become a member of two such societies, either or both of the societies shall be bound to remove him from membership upon a requisition from the Registrar to that effect

A bankrupt must cease to be a member if the holding of a share is a condition of membership, for all his property becomes vested in the assignee

The following rules are usually prescribed for societies with unlimited liability

(1) A member may, provided he is not in debt to his society or is not surety for an unpaid debt, withdraw from the society after giving one month's notice to the Secretary [1]

(2) A member who ceases to be qualified under the by-laws may (or shall) be removed by the Committee

(3) A member may be removed or expelled from the society in accordance with such procedure and for such causes as are prescribed by the by-laws and not otherwise

(4) A member withdrawing, removed or expelled from the society shall be entitled after the period prescribed by section 23 to repayment, without interest, of any money paid by him or his predecessor in interest towards the purchase of a share or shares

This last rule cannot be applied to societies with limited liability, as, in these, the share money is ordinarily not withdrawable, so long as the society owes money to creditors In limited liability societies the right to withdrawal is not important, especially where the shares are fully paid-up.

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[1] In a society of unlimited liability, a member should be allowed to withdraw at once before a resolution, incurring a liability to which he objects, is passed But as this might permit of a sudden collapse of a society with outside liabilities, a period has been prescribed in which arrangement could be made for liquidation or for meeting these liabilities

(*n*) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;

See notes to section 22.

Deceased member's interest.—Some Provinces have the following rule :—

The sum representing the share or interest of a deceased member in the capital of a society with unlimited liability shall, for the purposes of section 22, sub-section (1), be the amount actually paid up towards the value of the share or shares held by him (and Burmah adds) : unless the by-laws provide for calculation thereof otherwise. This rule makes no allowance for losses. In Germany the value is calculated after examination of the annual balance-sheet, and this is clearly the best method. The Friendly Societies Act limits the value of the share so devised to one hundred pounds.

Nomination.—All Provinces have made similar rules providing that :—

(1) a member may (or shall) nominate a person (and only one) to whom under section 22 his share or interest shall be transferred;

(*Note.*—The Indian Act follows the Friendly Societies Act and allows only one person to be nominated. The Industrial and Provident Societies Act allows more than one because the objects of many societies is to provide provident funds for widows and children. The Bombay Acts allows more than one nominee but Madras adheres to one only.)

(2) a member may revoke or vary such nomination by writing;

(*Note.*—He must do this during his life-time, he cannot revoke it in his will.)

(3) the nomination must be registered in the books of the society kept for the purpose;

(4) the member must report the death of his nominee; *to these Madras, Bengal, Punjab, etc., add :*

(5) the nominee may become a member only if admitted by the Managing Committee.

The rules are taken from the Friendly Societies Act (sec. 56) which adds that the nominee must not be an officer or servant of the society unless he is related within a specified degree to the nominator.

A minor member cannot legally appoint a nominee.

In England, the marriage of a member operates as a revocation of any nomination previously made by a member.

It is to be noted that where the rules provide a method of revocation of the nomination, a nomination is not revocable in any other way than that prescribed, e.g., by the subsequent will of the nominator. The rules bestow no power of bequest or of appointing an heir but merely enable a society to dispose of a deceased member's interest without litigation. The society is bound to follow the nominator's expressed wish; it must never become a party to any family arrangements in regard to division of the property. It must pay to the person nominated or to "such person as may appear to be the heir or legal representative" and leave him to fall in with any private arrangement. In England a society which, on receiving satisfactory proof of the death of a member, fails to pay the amount due to the nominee, commits an offence.

The Act should confer upon societies similar powers to deal with the interest of members who become insane.

(o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member;

In Germany the assent of the Board of Supervision is necessary to any loan granted to a member of the Committee, in Oregon, U. S. A., it is prohibited by law and generally there is a rule prohibiting such loans entirely during the term of office. They are also not allowed to be accepted as sureties. Mr. Wolff says: "Whenever a bank has suffered serious loss—in Germany at any rate—the cause has generally been that one or other of the Committee has been trusted with excessive credit, and hence the need of a Board of Supervision." The same trouble occurs in India and the Committee on Co-operation suggested the fixing of a maximum loan for each member in order to remove it.[1]

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[1] *Cf. Madras Annual Report, 1915-16:* 'The natural tendency of punchayetdars to appropriate the major portion of loans for themselves and their dependents and friends is repressed by by-laws requiring the sanction of the general body of members to such loans; while another by-law, now being generally adopted, disqualifies a punchayetdar for office if he has defaulted in respect of his own loan for three months.'

But a sub-committee of the Sixth Burma Conference decided that "no special restrictions as regards the issue of loans to chairmen are required." This may be regarded as the general opinion where teaching has been adequate.

Order of preference.—A Burma Conference put the order of precedence thus: cattle, debts, annual expenses of cultivation or living, redemption of land, purchase of land. The same Province had a by-law that no member should receive a new loan, if there are applications pending from members who have received no loan.

Short term loans (for six months or a year) should generally be given preference over those for a longer term; the Italian popular banks give preference to loans for the smallest amounts. The object must be to make the best use of the money available. If one member has a large loan for a long period of, say, three years, the other members are prevented from using that money. Mr. Wolff does not favour a hard and fast preference for the small loan and would pay more regard to the character and purpose of the loan than to its size.

A banker requires to know the amount of the advance desired, the purpose for which it is granted, the length of time for which it is required and the security, if any, which is to be given for it. These points may be discussed in order.

Amount which may be lent.—Under the Friendly Societies Act it is prescribed that a society shall not make any loan to a member on personal security beyond the amount fixed by the rules, or make any loan which, together with any money owing by a member to the society, exceeds fifty pounds (Rs. 750). In German rural societies 78 per cent. of the loans do not exceed £50. The maximum should be fixed moderately low as the main security is personal security and experience shows that there is a low limit to the loans which can reasonably be advanced on this security. At the same time, the desirability of restricting loans to what is actually necessary should not be strained into the advocacy of lending less than is necessary. In Roumania the maximum is £40. In Bombay the by-laws fixed Rs. 500 while in Burma at one time Rs. 200 was the limit. In Madras the by-laws prescribe the maximum; the Ninth Bengal Provincial Conference decided that primary societies should not advance loans exceeding Rs. 250, without the previous consent of the Central Bank and this has now been made a rule. The Fourth Departmental Mysore Conference (1917)

decided that the maximum loan to individual members be fixed at Rs. 1,000, in ordinary cases and at Rs. 2,000 in special cases. The Russian small credit society fixes the maximum at Rs. 500 (approximate) for ordinary loans and at Rs. 1,000 for loans secured by mortgage on grain.

Throughout all forms of banking it is the big accounts that constitute danger; many bank failures have been due to the facilities granted to a few favoured accounts, and most bankers set their face resolutely against big loans. In India the question is complicated by the scarcity of Land Mortgage Banks or even any widespread banking system. The Village Credit Societies are therefore called upon to advance loans for purposes that in other countries are regarded as outside the proper sphere of their operations and for amounts that elsewhere would be considered unwise. In rural areas there is no sound system of credit; one is being slowly built up and in the course of construction existing conditions have to be considered. . .

The limit to be fixed depends on the purpose in view. If, for instance, loans to cultivators are to be restricted to what is needed for agricultural purposes, the maximum will not be high. Experience is all against the attempt to pay off all the debts of a member on admission. In relieving debt without any corresponding effort on the part of the debtor, there is real danger of weakening his strength of character. It is best to pay off part of the debt at a time (para. 37).[1]

The Sixth Conference (1912) considered that it would be a good thing to encourage societies to fix an annual limit for themselves and this is now generally done. In most provinces there is a register showing the property of its members and its value and, in some cases, the maximum loan is a fixed fraction of this value. This is dangerous; the Madras Committee pointed out that loans granted by societies to members must be based upon the capacity of members to repay (*i*) out of the proceeds of their crops in the case of short term loans, and (*ii*) out of their savings in the case of long term loans. The Burma Committee were more definite: the amount of every loan should be limited by (*i*) actual requirements, and (*ii*) by the existence of a clear method of recovery from earnings within the time prescribed. The Seventh Conference (1913) resolved that it was premature

[1] The American Federal Farm Loan Act allows loans for the liquidation of existing indebtedness.

to lay down the principle that in limited liability share societies the size of loans should be proportionate to the share capital paid up by borrowers[1] The Committee on Co operation considered that the necessity for fixing the limits up to which individual members should receive normal credit is due largely to the fact that in the absence of such a standard there is a temptation for the members of a Committee to sanction larger loans for themselves and their friends than is equitable The annual general meeting now generally fixes the maximum normal credit for each member for the following year This limit the Committee is forbidden to exceed on its own authority The Foreign Experts of the Banking Enquiry Committee were of opinion that fixing credits for each member should not be a matter for the general meeting but for the Managing Committee in consultation with a special Supervising Board The general meeting should fix the maximum credit limit for members in general and should sanction credits for members of the Managing Committee and Supervising Board Cases in which additional sums are required (e g to discharge old debt or to release land from mortgage) have to be referred to the general meeting A member is not of course entitled as of right to obtain the full amount fixed The object has to be considered and approved and the paramount consideration must always be the certainty of repayment

The original Punjab by laws provided that no member should be given a loan greater than one tenth of the total working capital In Hungary the loan to any member must not exceed 15 per cent of the whole of the society s capital[2]

The purpose or object of the loan —This controversial subject requires somewhat lengthy treatment The main guiding principle is very simple the extent to which it may in practice be departed from is the reverse of simple It must be assumed that every loan will be repaid by the borrower This repayment must be made from his income

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[1] In French credit societies no limit has been prescribed by law as to the size or length of the short term loans In some of the societies the size is proportioned to the sums paid up by the borrowing member on his shares and may not exceed 10 15 or 20 times that amount in others the maximum is fixed between Rs 600 and Rs 1 200 (approximate) but in every case the credit rests upon the character of the borrower and no person no matter how well to do can get a loan unless his reputation for industry and honesty is good The loans generally run for three months with right to one two or three renewals Herriot p 340

Monographs *cf* Herrick p 3

or from his capital It will cause him loss unless the expenditure of the loan has yielded a return bigger than the loan itself But the society exists not to cause loss but to increase gains, so that unless a loan is going to save the borrower something more than he will have to repay, it will not only cause him loss but it will contravene the objects for which the society was started If the return from the expenditure of the loan covers principal, interest, and a little profit, the loan is productive But as few cultivators keep accurate accounts, it is almost impossible to say confidently how far additional expenditure will bring in additional profit Thus the importance of proper enquiry into the object of the loan cannot be too strongly insisted on No banker lends money in the dark and even the village sahukar notes the object of the loan in his books The Act itself says nothing about the object The resolution recited that Government has deliberately refrained from placing any restrictions on the object for which loans are granted[1] It would be suicidal for societies to place any absolute prohibition on the grant of loans for unproductive purposes The society occupies the place previously held by the money-lender, and it must give loans for all purposes for which loans are essential, including any social expenditure required by the public opinion and if it failed to do this it would only encourage its members to resort to money-lenders The Government of India, however, did not mean by this that loans should be given when they were not necessary Loans must not be made where no profit or saving can be shown If a member must[2] have money (e g , for his marriage), he may have it from the society The Committee of 1901 proposed to restrict loans for marriages and domestic occurrences to members who had had deposit accounts with the society for the past three years and to an amount not exceeding 50 per cent of the annual average of this deposit account for the previous three years The Famine Commission, as we have seen contemplated loans for reproductive purposes only being taken from the society and loans for marriages, etc , from the village money-lender Experience has gradually taught co operators that loans cannot be

[1] The Government of India rejected the proposal to insert that no loans should be permitted except for productive expenditure' mainly on the ground that whatever restrictions might be imposed by law it would be impossible to enforce them while their mere existence would encourage evasion and deceit (Sir D Ibbetson *cf* Ray, p 271)

[2] But, as Mr Wolff says —'necessity alone will not justify loans if there is no certain prospect of recovery

refused for all non-productive purposes, as owing to custom and sentiment some non productive expenditure must be accepted as necessary But the purpose of the loan should invariably be noted and should be approved by the Committee, and there should be effective supervision to ensure that the sum borrowed is expended on the purpose approved The Committee on Co operation endorsed this and even stated that loans for unproductive purposes were in some cases not only permissible but advisable They added, however, that precaution should be taken by societies to see that the expenditure was inevitable and that it was not excessive in amount (para 62) The general rule remains the same Loans must ordinarily be for productive purposes only, and any departure from this must be made with great care and it must be realised that such a departure is an exceptional and not an ordinary proceeding Loans for unproductive purposes are permitted as a concession to customs which cannot be eradicated They must ever be a danger to the societies and a source of weakness to the members The first rule is that loans to members shall only be made on the condition that the purpose for which money is borrowed is such that there is a sufficient prospect of the loan repaying itself by the production, business, or economy which it will enable the borrower to effect Mr Wolff would strictly adhere to the rule of loans for productive purposes only so that the employment becomes a pledge for its own value The loan should repay itself out of its own proceeds Sir Horace Plunkett expresses the intention clearly when he says that once a community has learned the difference between borrowing to spend and borrowing to make money, it is on the road to prosperity It has been argued by an Italian writer that the restriction of loans to agricultural objects prevents the development of credit, and implies that the loan is given not to the member but to such and such an agricultural operation The personal factor is thus diminished He thinks that as members are habitually engaged in agriculture, it may be assumed that they would devote the loan to their land Unfortunately, in India at least, the cultivators have not yet realised the full advantage of putting capital into the land, and loans for purposes other than agricultural must be granted sparsely and under close supervision This is not confined to Co operative Societies Bankers will advance money to finance transactions directly connected with the borrower's business but insist on very full particulars when money is required for other purposes The banker must know what is to be done with the loan as he wishes to be

assured that its expenditure will strengthen and not weaken the position of the borrower. It is no argument in favour of unproductive loans to say that they are fully secured. Sureties may be quite good but they do not expect to be called upon to repay and they resent any effort to recover from them. The success of Co-operative Societies and the confidence they can attract from outside depends upon the ability and desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. Each loan should mean so much earning capacity, so much producing power for the individual borrower (*cf.* Committee's Report, para. 2).

In allowing loans for unproductive purposes, every precaution must be taken to see that the purpose is necessary, that the expenditure is not excessive and that the loan is applied to it. Supervision is far more necessary in these cases than when the loan is for a productive purpose. Unfortunately the object in India is frequently falsely stated and the United Provinces Conference thought it was practically impossible to check such untruthful statements effectually. There must be in the bond a provision for recalling the loan within one month or immediately if not properly applied and at inspections the strictest enquiry into the proper use of loans must be made (*cf.* Committee's Report, para. 63).[1] The Poona Conference (1916) adopted the useful suggestion that the credit of individual members should be assessed under two heads: current agricultural expenses and other purposes. For the former *individual cash credits* might be opened. The Committee on Co-operation considered (para. 73) that when societies are firmly established on correct principles there is no better way of meeting the needs of members. Mr. Wolff insists that cash credits must not be used so as to dispense with the necessity of securing approval of the object of the loan; for current agricultural expenses it is the best method to employ. The Raiffeisen model rules dealing with cash credits specifically enjoin supervision over the due employment of loans so obtained. In Russia credit societies allow loans for a purpose not stated for very short periods and for sums not exceeding one-tenth of the sums usually granted.

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[1] In Portugal the purpose of the loan must be stated in the application, and if the borrower uses it in any other way he must be expelled and can never become a member of another agricultural mutual credit bank, besides being liable to criminal prosecution and a fine of from Rs. 15 to Rs. 1,500. Herrick, p. 424.

In conclusion it may be stated that the primary object of credit societies is to supply the cultivator with working capital; ordinarily they should grant loans for none but productive purposes; they strive to promote the economic interests of their members and they seek to do this by providing money for purposes which will enable the members to repay principal and earn a profit. Unfortunately in the special conditions of India, it has been decided that loans cannot be confined to productive purposes. There are necessary expenses which the members must incur and it is better that they should borrow from their society rather than from the village money-lenders. But expenditure on unproductive objects weakens the economic position of the members and the societies must exercise a very close check on this and must constantly be on their guard against the danger of granting loans too easily and so leading their members into increased indebtedness. The Act starts with the assumption (*vide* preamble) that the members will be persons of limited means whose position can be improved by the provision of capital; their economic position cannot be improved by providing them with money for unproductive purposes unless the expenditure is so inevitable that, if the member cannot get a loan from the bank, he will be driven to borrow on harder terms elsewhere. If a refusal of the loan can be made without involving the members in debt to outsiders, it should be done.

The *period* for which a loan may be granted is determined, by two quite distinct factors, one, the period for which the society will have deposits or other funds to finance the loan, and the other, the time required for the full accomplishment of the object of the loan so that it may be repaid from the proceeds.[1]

If the loan is to be repaid from the additional wealth produced by its expenditure, the period must be long enough to allow of this additional wealth accruing. It is obviously no use advancing a loan for so short a period that the borrower cannot repay it from his income. To repay it from his capital would weaken his economic position. Agriculture requires funds of three kinds: fixed capital to be sunk permanently or for a long period in the acquisition or improvement of the land and in the purchase of equipment; circulating capital to be used for short periods in growing,

[1] Wolff: Co-operation in Agriculture, p. 262.

harvesting and marketing the crops and capital for an intermediate period for such objects as bullocks, the more expensive machinery and minor improvements, which can be repaid in from two to four years. The ordinary business of commercial banks is credit transactions for two or three months. The Central Provinces and the Madras Committees laid great stress on the importance of dividing agricultural loans into long and short term loans, and recommended special arrangements for short term loan business. The Madras Committee distinguished these into crop loans repayable in whole out of the next harvest, and others repayable in instalments over a period of years out of the annual savings of the borrowers and proposed separation of accounts—separate promissory notes, separate ledgers and separate figures in the balance-sheets. The Burma Committee found this elaboration in vogue with the result that no one knew what a member owed and the separate ledgers provided unlimited opportunity for fictitious accounting; a short term loan if not repaid was transferred to another ledger and shown as fully repaid in the original one and so on. They accordingly recommended simplicity of accounts. The Indian Central Banking Enquiry Committee notes that all the Provincial Committees and almost every competent authority on co-operative credit in India, are agreed that the existing primary societies, central banks and provincial banks .....can supply only the short and intermediate credit. The Imperial Bank is prohibited from making loans for periods longer than six months. The commercial banks freely grant extensions where the security is sound so that it is difficult to determine what is the real period of their loans. The experience derived from liquidation proceeding suggests that some commercial banks lock up funds to an extent that is undesirable.

By *banking facilities* are meant those which can be provided without such a "lock-up" as would impair the liquidity of funds and deposits at call and short notice. Where a business requires funds with a longer currency than a few months, it is said to require *financial facilities*.[1] Thus by *a short term loan*, a commercial banker means one for period not exceeding three months. Provided the security is good, he will of course fully extend, and it may be that a loan may run on for long periods, but ninety days is the usual period fixed at each extension. But agriculture

[1] As defined by the Board of Trade Committee to investigate the question of Financial Facilities for Trade.

seldom yields any return under four or five months, so that six months is almost the minimum period. It, on this account, needs a system of its own and beyond all doubt the best system ever devised for providing farmers with floating capital is the system of co-operative credit.[1] The existing commercial banking system has, in its leading features, been gradually evolved to meet the needs of the business and commercial world, not of agriculture nor even of industries. In the main, it finances not production but distribution. The great majority of farmers cannot look forward, as most business and tradesmen do, to having a continuous inflow of receipts throughout the year; his returns are seasonal. It is the length of the period of production, i.e., the length of time usually required before a loan can be repaid from the returns obtained by the outlay, that is the outstanding feature of the farming industry. Nature herself has fixed these limits, which the farmer is almost powerless to alter; whereas the manufacturer or business-man can, to a certain extent, shorten at will his periods of production or turn over his stock more rapidly so as to fit in with his credit requirements.[2] It is noteworthy that Luzatti's People's Banks have not been able to render as much help to farmers as the latter required or as their founders expected of them, for the reason that they do not find it convenient to grant loans for the long periods required by agriculture or else they obtain more profitable employment for their funds in the cities.[3] They lend for a term not exceeding six months and allow an extension for four months upon punctual repayment of the original loan. To farmers longer terms are allowed subject, however, to a maximum of one year. The small credit societies, however, are able to discount with the central financing banks the bills drawn by them on farmers and allow longer periods: one year for loans for cultivation, harvesting and purchase of seed and manure; two years for loans devoted to buying live-stock and three years in the case of loans for the acquisition of machinery.[4] In Russia, loans are never granted for longer than a year.[5] In Serbia, the maximum maturity for loans is two years, and this cannot be extended except in case of bad crops,

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[1] Herrick, p. 9.
[2] Irish Report, p. 11.
[3] Herrick, p. 353.
[4] Agricultural Credit and Co-operation in Italy.
[5] Herrick, p. 398.

when a renewal of only six months is permitted[1] In Portugal the loans of a bank must not be for longer than one year with a renewal for one year more"

In Roumania an Agricultural Loan Office may not lend for terms beyond nine months and the law does not provide for any prolongation In India loans under the Agriculturists Loans Act are for short periods of six months or one year In the Central Provinces loans under this Act are advanced on pro notes which have to be renewed every year (this enables the Committee to see that the security remains good)

The Madras Committee on Co operation (1928) found that of the amount outstanding with primary societies of all kinds on 30th June 1927 27 17 per cent had been advanced for one year 17 75 per cent had been advanced for two years 38 51 per cent had been advanced for more than two years but less than five years and that 16 27 per cent had been advanced for periods exceeding five years

Section 23 of this Act limiting the liability of past members to two years clearly suggests that in general loan transactions should be completed within this period Liability for loans for longer periods might fall solely on the staunch members if others withdrew

The Committee on Co operation advocate by laws fixing standard maximum periods as in Burma The following may be taken as a suitable scale —

(*i*) Loans for unproductive purposes —short periods and as a rule not exceeding two years

(*ii*) Loans for trade or to enable cultivators to secure reasonable prices for their produce should be strictly limited to three months

(*iii*) Loans for seed food cultivation expenses or cattle fodder —to be repaid after the next ensuing harvest

(*iv*) Loans for purchase of carts or cattle for liquidation of small debts and for house building — to be repaid in two or three years

(*v*) Loans for liquidation of large debts purchase or redemption of land or expensive improvements of land —to be repaid in three or four years

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[1] Herrick p 408
Ibid p 403

Practically all provinces now realise the importance of concentrating on the short term or crop loan; the Burma Committee recommended that no long term loans be given at all; a minority wished to limit transactions to crop loans, but the majority allowed intermediate loans for cattle, although they stressed the need for great care in giving them and considered that loans for repayment of old debt, redemption of land, etc., should not be given until the society's own capital was sufficient to cover such transactions.

The Managing Committee should have no discretion to vary these terms but may have authority in exceptional circumstances to sanction an extension up to one year when the time for repayment arrives. The society should reserve to itself in all cases the right to call in a loan at four weeks' notice, and to call it in immediately when loss is threatened through deterioration in assets of either borrower or surety (*cf.* Raiffeisen Model Articles). It should be at once recalled if it is improperly applied.

In all cases where the period exceeds one year, repayments should be made by compulsory annual instalments and preferably by instalments on each crop. This long period, characteristic of agriculturists loans, necessitates special care in the taking of deposits. It is noteworthy that there is a considerable feeling abroad that Commercial Banks do not give credit for periods long enough for all the purposes of trade and it was to find a remedy for this that the formation of a British Trade Corporation was proposed. It would give longer credits than ordinary banks, and in consequence would take no deposits at call or short notice and could open no current accounts except for the actual traders using its facilities.

The pressure brought on Village Credit Societies in India to issue loans for comparatively long terms is in some measure due to the absence of other financial facilities. In other countries loans are advanced on first mortgage of land by special Land Mortgage Banks and by Insurance Societies. In America, the average period of loans advanced by the latter is five years, whereas the farmers, for the purchase and permanent improvement of land, desire loans for periods of from 25 to 35 years.[1]

In Baroda (*vide* Report for period ending March 1921). "As Co-operative Societies cannot in consequence of the limited resources at their disposal, conveniently afford to

[1] Huebner, Agricultural Commerce, p. 330. *Cf.* Herrick, p. 7.

make long term advances to their members for the liquidation of their old debts, Government was graciously pleased to sanction one lakh of rupees to be advanced to the Baroda Central Co-operative Bank for this special purpose....The Bank receives the money from Government at 3½ per cent. and lends it to the societies at 5 per cent. while the societies in their turn advance the necessary loans to their members at 6 per cent.....Similarly a sum of Rs. 50,000 has been sanctioned for the Mehsana District Co-operative Bank for redeeming the old debts of the members of the Co-operative Societies."

Punctuality in repayment is a most important point in all business and must be rigidly insisted upon. The Committee on Co-operation write that there is no defect more prominent or more dangerous in the management of Co-operative Societies in India than the exceeding laxity and unpunctuality in the repayment of loans.....unless loans are repaid punctually, Co-operation is both financially and educationally an illusion, and no exertions are wasted which aim at ensuring promptitude in this respect.....There is nothing in our opinion more important to the success of the movement than the provision of clear information as to the punctuality or unpunctuality with which loans are repaid (para. 74). Punctuality should be secured by the application of personal pressure rather than by the levy of penal interest (para. 76) [no penalty for non-payment can be levied unless this is previously provided for in the bond or by-laws]. Mr. Wolff urges rigorous insistence on prompt repayment. The society's educational objects demand this. The Bank is to make people business-like, to teach them to calculate, to make them conscientious. The longer are the periods for which the loans are granted, the more indispensable is it that the debt should be steadily reduced as time goes on. This kind of strictness forms a new kind of security. Repayments must, of course, be real and must correspond with a real reduction of the borrower's liabilities and not be made by a re-arrangement of debts.

It is incumbent on the society to accept repayment of loans in advance of the instalments due, if this can be done without involving it in loss. In India, the money-lender does not like payment in instalments; where security is good he often avoids repayment and the consequent necessity of finding a fresh outlet for his money. The society must improve on the money-lender but it may happen

that, especially in the case of a large loan, an unexpected repayment in advance of the due date would result in the society having an unwanted balance on which it was probably paying interest to the Central Bank. In the case of mortgage banks, it is not unusual in such circumstances to charge the borrower a sum equal to three or six months' interest in order to cover the expenses of finding a fresh investment for the money.

Renewals[1] are inevitable where owing to weather or other conditions, crops are precarious. The Sixth Conference (1912) considered that they might be given but only sparingly and when good excuse exists and the security remains sufficient.

It is very important to insist that the question of renewal does not rest with the borrower; the consent of the sureties must always be obtained to the proposed extension of their liability and the final decision must rest with the Managing Committee.

Of the danger of renewals, there is ample warning. Mr. Wolff, for instance, says: There is a distinct danger in uncalled for renewals. The concession made is very apt to be abused, and from such abuse may spring a bad habit, absolutely fatal to any society.....The point is to make sure that the case is genuine.[2] Another writer says: The temptation to connive at renewals arises naturally wherever the people entrusted with the management of the society have an insufficient appreciation of their responsibilities or are not competent to discharge them.[3] And again: The practice of renewals is one of the most insidious evils which may be brought about by the complaisance or carelessness of the Committee and denotes the beginning of decay.[4] It should not be necessary to point out that renewals form the usurer's favourite means for getting a borrower firmly into his clutches.

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[1] By a *renewal* is meant the re-issuing or extension of a loan beyond the period for which it was originally granted, without proof that the money will be applied to any new purpose or that any additional profits will follow from its repayment being withheld. (Rural Reconstruction in Ireland, p. 145.) Mr. E. P. Stocker, who has served on three Committees on Co-operation, would not 'renew' a loan but would allow the Committee to sanction an extension of the period, i.e., he would not re-issue the loan.

[2] Co-operation in India, p. 167. But in Co-operative Credit for the U. S., p. 15, the same writer points out that owing to the uncertainty of the farmer's return, an arrangement for frequent renewals is necessary.

[3] Rural Reconstruction in Ireland, pp. 145-146.

[4] Smith Gordon, Co-operation for Farmers, p. 110.

The Madras Committee urged that extensions of short term loans should only be granted in the case of crop failure: in such case they should be freely sanctioned. The Burma Committee were more detailed:—All precautions as to amount and period of loans will avail nothing if renewals and extensions are granted too freely and without just cause. No renewals should be allowed. The borrower and the Committee must be taught that their original decision as to instalments is a definite promise and a definite order arrived at by mutual agreement, and that any departure from these terms should only be sanctioned for thoroughly sound reasons.

The security for the loan should generally be personal. Other kinds are subject to restrictions in section 29 (2) (3). The Committee on Co-operation follow all previous authorities in insisting on sureties for every loan. They write (para. 65) that the primary security for all loans is personal; by the provision of securities recovery is facilitated and a further safeguard is obtained against the grant of excessive loans or the misapplication of money borrowed and they consider that the provision of securities should be the rule in India. Madras, however, still lends to a small extent on simple bond.

The chief security in short term credit is of personal character. The promise to pay is backed by the man's reputation for ability and willingness to pay. This is usually supported by the indorsement of one or two other men of at least equal standing.[1] If credit is to be cheap, the security must be good.[2] It has been said that the strongest argument in favour of personal credit Co-operation is the educative value of Co-operation. This educative value is enhanced by the system of personal sureties. But it is unwise to overburden friends. In the Fourth Burma Conference, a sub-committee resolved that persons taking loans in excess of Rs. 300 in Upper Burma and Rs. 500 in Lower Burma should be required to execute registered mortgage bonds in favour of the society. In some countries the law insists on two sureties being taken for every loan.

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[1] American Commission's Report. Observations, Part I, p. 15.

[2] If we would build for the future we must build wisely. In the world of finance the corner stone is ever the same—security. The only basis for cheap credit is the security that cannot be questioned. We should remember that promptness is the quickest way to establish a reputation for security. All obligations must be met at due date (Saskatchewan Report, pp. 208-209).

The Madras Committee found that 49·3 per cent. of the loans in primary societies were secured by mortgages and 48·4 per cent. on personal security. They found a greater degree of punctuality in the repayment of surety than of mortgage loans. A mortgage backing is desirable in the case of most long term loans but the Committee issued a warning against the tendency of central banks and primary societies to consider loans on mortgages as properly secured, and therefore necessitating no attention if overdue. The Burma Committee advised societies to shun mortgage security, to confine themselves to personal sureties for all loans, and to protect themselves by limiting the loans to amounts and for periods for which this security is suitable.

In its commercial business, a joint-stock bank insists on security of certain well-defined kinds, but in dealing with farmers the peculiar nature of his business is recognised, and loans are advanced frequently on personal knowledge of the farmer and his business. Very large sums of money are lent, for instance, solely on the security of a statement put in showing the extent of the holdings, the stock upon the farms, rents and the nature and extent of other obligations. A branch manager is judged by his ability to advise and the success of his advice as tested by experience. He has to remember that banks must be liberal in lending where loans are justifiable, and that they cannot avoid sharing in the risks inseparable from all business enterprise but ability is shown in the choice of the risks. At the annual general meeting of the Westminster Bank in 1923 it was stated that "41 per cent. of the farmers who borrowed of us received credit on that personal knowledge by our managers of their character and business which we are accused of totally ignoring". The skill of the managers and the great care they exercise in selecting suitable cases for loans are reflected in the very small losses.[1]

Qualifications of sureties.—The sureties must not merely be solvent, they must be known from their means to be good for the amount (Raiffeisen rules). Even this is not enough, for if security is to be taken it must be adequate; in deciding whether a surety is good the point to be kept in view is not the sum which might be squeezed out of him by distress and sale but the sum which he could at any time pay without serious inconvenience. A safe rule is to accept a man as surety for a sum equal to one-tenth part of his

[1] Walter Leaf: Banking (1926), pp. 169-170.

property, for the payment of one-tenth will be quite a sufficient loss for him to bear

In assessing a man's value as a surety, his liability to the society as a borrower must be deducted The Irish rule provides that no member who is in possession of money lent to him by the society shall be accepted as surety for another member requiring a loan, unless the Committee are unanimous that it is safe to do so

The acceptance of personal sureties is apt to be regarded by commercial banks as an element of weakness in co operative credit, such banks regard government paper as the most acceptable form A very interesting comment on this point is provided in the Report of the Punjab Banking Inquiry Committee (para 159) where it is stated that the loss to eleven Central Banks from depreciation of government paper is more than the total amount that has had to be written off by all central banking institutions in ten years on account of their loans to societies

The rapid fall in the value of wheat and cotton stored in elevators and godowns, on which loans had been advanced, is another instance of the care required in any discussion of the relative utility of differing forms of security

Non members are not desirable sureties The United Provinces Conference held that though ordinarily the sureties themselves should be members, non members should not be debarred, but the real idea of sureties is that they should watch over the utilisation of the loan and so should be members The Fourth Conference (1909) endorsed this view There is risk in accepting non members as these are not amenable to the discipline of the society and cannot be dealt with under the arbitration procedure

With this view Mr Wolff disagrees —It is not necessary as some Indians stipulate, that the surety enlisted should be a member of the society It will be quite sufficient to know that he is " good " If not a member, he will, by his liability engaged, by adding a new outside buttress to the fabric of the society, pledging more money for its liabilities [1] And again —It is a mistake to suppose that the sureties must needs be members of the bank The bank should give only to members, it may take from anyone In truth, a surety, being first approved of course, not being a member of the bank, rather tends to strengthen the bank, as buttressing it with outside support The one thing needful is that the

[1] Co operation in India, p 166

surety be sufficient for its purpose and that its willingness to serve should be ascertained beyond doubt[1] In actual practice, it is more convenient to have, as sureties, members who have already been selected for honesty and character Bonds signed by non-members as sureties are not exempt from stamp duty In spite of the great authority against it, the best general rule is that sureties must be members[2] The Bombay Conference of 1920 recommended that the Local Government should issue a rule prohibiting the acceptance of non-members as sureties by all Co-operative Societies and the Local Government has now done this "provided that the Registrar may, for special reasons, exempt any society by name from the operation of this rule" It is pointed out that the acceptance of non-members would enable societies to advance loans with greater safety to members of joint families, as the other members of the joint family could then be made sureties for the loan advanced

Mr Darling (Ch I of his Report) writes In Saxony as in the Punjab, only members are accepted as sureties, but elsewhere in Germany there appears to be no objection to the non member surety provided he belongs to the same village and is well known

Loans on trust without sureties are permitted in Italian Popular Banks subject to strict conditions The poor person must usually be recommended by two patrons and he must have a good reputation for honesty and industry, he must be engaged in some business or industry and he must be able to read and write These loans are limited to about sixty rupees, the maximum period is one year and no second loan is granted to a borrower who has not been punctual with his instalments Moreover no second loan is granted until two months after repayment of the former one

Where immoveable property is accepted as security, the value of the property should be twice the sum lent, except where the period is short and repayment is by frequent (e g, monthly) instalments

Interest on loans cannot be fixed by Local Governments but the Committee thought the rate should be entered in

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[1] Co operative Credit for the U S, p 53

[2] Herrick p 390 writing of rural Co operative Credit Societies, under the Danish law says 'no security is allowed to be taken' The financial standing of a member is determined by the registered cattle he owns, and the extent of his credit is Rs 40 per head

Mr Strickland did not find this to be the practice now

the by-laws and made unalterable without the sanction of the Registrar.

The rate should be fixed in conformity with the general object of all co-operative associations, namely, the rendering of the best possible service at the lowest possible rate. It must be sufficient to pay expenses. Whether it should be higher than is necessary for this purpose is a matter of policy. In India, it is generally considered desirable to fix a rate high enough to allow of a margin of profit which swells the reserve fund and so protects the unlimited liability and increases the financial stability of the societies. In Europe, this formation of a reserve fund is not considered so necessary, and societies work on the lowest possible margin over the interest on money borrowed. Generally the rate on loans is from one half to one and a half per cent. more than the rate paid on deposits. In some countries (Roumania, Italy, Hungary, etc.)[1] the State insists that the rate shall not be more than one or two per cent. above the discount rate of the State bank or above the rate charged by the central financing agency. The general question has already been dealt with.

The Government of India rejected the suggestion to prohibit *compound interest*, because when fairly used, it is just; prompt recovery of debt is essential to the working of societies. There is danger that they may be too slack in dealing with their friends and neighbours and compound interest will provide a useful stimulus to the debtors.[2] Against this view may be set the general experience that toleration of avoidable arrears on any terms encourages a thoroughly wrong attitude towards them.

(*p*) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;

See section 33 and notes, also notes to clause (*r*) *post*.

Reserve funds may be of two classes :—A *general reserve* is an amount set aside out of profits to provide additional working capital, or to strengthen the liquid resources, and to be available for contingencies. A *specific reserve* is an

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[1] *Cf.* Herrick, pp. 340, 360, Outline of European Systems, p. 19, Monograph, and Nicholson.

[2] Sir Ibbetson—Ray, p. 272.

amount set aside out of the profits to provide for some probable or estimated loss on the realisation of certain assets (e g , investment depreciation) or in respect of pending transactions (e g , bad debts) The Indian Central Banking Enquiry Committee recommended that central banks should start bad debt funds by carrying a reasonable amount of profits to them in addition to the statutory allocation to the reserve The practice in joint-stock companies may be thus stated —Where additional working capital may be usefully and profitably employed in the business, it is sound financial policy to leave such profits (general reserve) in the business The fact that the reserve is not invested but is retained in the business, is not by any means a sign of weakness But a reserve fund invested in gilt-edged securities, forming realisable assets that can be utilised at any moment should there be a sudden call upon the business, is a source of considerable strength A general reserve invested outside the business is called a Reserve Fund When the reserve is not represented by specific investments, it is better called a Reserve account [1]

The Raiffeisen model articles make the reserve fund indivisible and prescribe that on dissolution it should be handed over to a Central Bank at compound interest until one or more new societies have been formed on Raiffeisen principles, covering substantially the same area as the old one , or it may be handed over to the communal fund and the interest may be devoted to objects of public utility In India and other countries, on dissolution, it must be devoted to some useful purpose in the district in which the society operated , the purpose is to be determined upon by the meeting at which the dissolution of the society takes place The English model rules contain the same provision Mr Wolff[2] writes " the reserve fund is by standing rule made the collective property of the bank, never to be shared out, not even in the event of the dissolution of the bank, lest there be a temptation to liquidate for the sake of the spoils While the bank exists the fund may be drawn upon to make good deficiencies Should the bank be wound up, it is to be handed over to trustees for suitable public employment "[3]

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[1] Spicer and Pegler Practical Auditing, 3rd Edn , p 150ff

[2] Co operation in Agriculture p 268

[3] In Serbia the reserve fund on dissolution is turned over to the Central Bank Herrick, p 40

The reserve fund of societies of limited liability, holding deposits from non-members, should ordinarily be invested outside the movement. Where there are no deposits from non-members this is of less importance, and where there are no deposits at all the society has no liabilities and can use the reserve fund in its ordinary business. In societies of unlimited liability, the reserve fund may be used as ordinary working capital.

The usual rule is to treat the reserve as indivisible. In a secondary society composed of primary societies as members, it may be divided amongst them on liquidation. In the ordinary social club the reserve fund (or surplus assets on liquidation) can not be divided amongst the members.

The Committee regarded it as most advisable that there should be a building-up of reserve funds with the help of a large margin of interest.[1] Where there are no shares, this course should be adopted, but where there is a considerable share-capital, one-fourth of the profits earned by its employment must by law go to reserve and there is accordingly less need for a large margin of interest. It cannot too often be urged that co-operative effort aims at rendering the best possible service at the lowest possible rate. An accumulation of profits under the name of a reserve fund becomes liable to objection if the sum is in excess of that required to ensure financial stability. But the result is much the same as if a member had to contribute to the share-capital in proportion to his borrowings. In the end, it is less a matter of principle than of practical expediency and experience inclines to favour the accumulation of a reserve in the earlier years, followed by a reduction of interest when the fund is sufficient to protect the unlimited liability and to secure financial stability.

[1] Compare the following:—'It is not the object of peoples' banks to gather from their members more interest than is necessary to secure themselves an assured existence. They exist for the good of their borrowers' (Dupernex, p. 19). The Belgian law forbids the accumulation of indivisible reserve (Herrick, p. 305). There are co-operative banks which have rapidly grown strong by designedly charging members, with the members' consent, in early years a rather higher rate of interest on loans than would have been strictly necessary, for the sake of creating a fairly substantial reserve fund, which places a bank above danger and greatly increases confidence in it. That temporary trifling sacrifice has well repaid itself (Wolff, Co-operative Credit for the U. S., pp. 44-45). As time goes on the reserve fund is to serve as an endowment for the bank, become its capital,—capital of guarantee at first to attract other money; afterwards also working capital—so that in that case the ideal of some men (M. Luzatti among the number) would be realised, of a fund being in existence subject to collective ownership only and therefore permanent (*Ibid.*, p. 127).

Under the new French Law, 75 per cent. of the net profits, after paying interest on the shares, must go to the reserve fund till it amounts to twice the share-capital, and 50 per cent. thereafter.

The Madras rules are as follows :—

IX. (*a*) In societies with *shares and unlimited liability*, not less than one-half of the net profits shall be set apart as a reserve fund until that fund is equal to one-half of the total liabilities of the society other than reserve and share-capital.[1] When that proportion has been reached, not less than one-third of the net profits shall be added to the reserve fund, provided that if, by any increase in liabilities other than reserve and share-capital, the proportion of reserve fund to such liabilities is again reduced below one-half, the share of the net profits to be credited to the reserve fund shall be raised to one-half until the proportion is restored.[2] The balance of the net profits, after one-half or one-third has been credited to the reserve as above provided, may be divided among the shareholders, subject to a maximum of $6\frac{1}{4}$ per cent. per annum on the paid-up value of each share. No dividend shall be distributed without the previous sanction of the Registrar.

In societies with *shares and limited liability*, not less than one-quarter of the net profits shall be carried to the reserve fund and the balance may be used in such manner and for such purposes as are prescribed by the by-laws of the society, (1) provided that no society shall pay dividend to its shareholders at a rate exceeding 9 per cent. per annum on the paid-up value of each share or set apart more than $7\frac{1}{2}$ per cent. of the net profits for a common good fund, and (2) provided also that any profits not allotted in the manner aforesaid shall forthwith be credited to the reserve fund. (Thrift societies are exempt from building up a reserve fund if they do not borrow from non-members nor lend to members.)

(*b*) Societies with *shares and unlimited liability*, registered as urban societies under India Act X of 1904, may continue to divide profits in accordance with their by-laws

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[1] Mr. Wolff would approve of this : no maximum should be fixed to the reserve fund, at any rate, proportioned to the share-capital. For it is not the amount of share-capital which comes into account in determining the proper figure for the reserve fund, but the volume of outstanding liabilities which there may be to meet. (Co-operative Credit for the U. S., p. 66.)

[2] Bengal also has this rule.

as they stand at the present date but they shall not increase the proportion of net profit to be divided among the members except in accordance with the foregoing provision

(*c*) No bonus, which, when added to the dividend, brings the total of bonus and dividend above the maximum laid down in clauses (*a*) and (*b*) shall be allowed but in the case of societies with shares and unlimited liability, the Registrar may sanction the payment of honoraria, on a moderate scale, to the office bearers of the society

(*d*) Should a society, whether with limited or unlimited liability, which is competent either under the Act or under the present rules to divide a part of its net profits among its members elect to appropriate such portion or part thereof to a "common good fund," the purpose designated by the expression "common good" shall be clearly defined in the by laws of the society and it shall not be other than a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890

X The reserve fund in a registered society shall be invested or deposited in one or more of the modes mentioned in section 32, sub section (1), clauses (*a*), (*b*), (*c*) and (*d*) of the Act provided that when the reserve fund of a society exceeds 20 per cent of its working capital, the excess may, with the sanction of the Registrar, be used in its own business Distributive societies may use the whole of the reserve fund in their business Other provinces have —All societies shall hold such percentage of their reserve funds in separate investment as the Registrar may from time to time prescribe

Most provinces have a clear rule The reserve fund shall be indivisible and no member shall have any claim to a specified share in it

"Indivisible" here means amongst the members The United Provinces therefor rule "Provided that in the case of re-organisation of a society into two or more societies the reserve fund of the parent society may, with the sanction of the Registrar, be distributed equitably with regard to the condition of each society to form the reserve fund of the new societies"

Generally all profits not divided under section 33 or 34 must go to reserve, in a limited liability society rule X (Madras) applies In unlimited liability societies it may be used as the Registrar directs (e g, in the business of the society) On dissolution it should be applied to

discharging liabilities (after the enforcement in full of the liability of the individual members—Central Provinces), repayment of share-capital paid up, and, if for any period no dividend has been paid from profits, to the payment of a dividend for such period at a rate not exceeding 10 per cent. per annum.

The balance should be applied to such local object of public utility as may be selected by the Committee and approved of by the Registrar. If within three months of the dissolution of the society the Committee fails to make any selection that is approved of by the Registrar, the latter shall either credit the above-mentioned portion of the reserve fund to the Co-operative Society, if any, to which the society is affiliated, or shall place the amount on deposit in some co-operative or other bank until a new Co-operative Society with a similar area of operations is registered, in which event it shall be credited to the reserve fund of such society (Rules of the Punjab, United and Central Provinces).

Madras, however, allows the Registrar, as an alternative, to use this balance in supporting Co-operative Societies in the neighbourhood.

The English model rules allow 5 per cent. interest on share-capital, and the balance of profits must go to the reserve fund until this equals the share-capital. Thereafter 5 per cent. of the profits may be paid to the workers employed by the society and the remainder (in non-credit societies) may be distributed amongst members on the Rochdale plan. In credit societies all surplus profits go to an indivisible reserve fund.

As to the employment of the reserve fund, there is some diversity of opinion. Its first function is of course to cover bad debts. Bombay has a rule :—Bad debts may be written off against the reserve fund of any society, and, in the case of limited liability societies, if the bad debts exceed the reserve fund, the balance remaining may be written off against the share-capital of the society :

Provided that (*i*) no bad debts shall be written off without the sanction of a general meeting ; (*ii*) before any such debts are so written off, the society, if it is affiliated and indebted to a Central Bank, shall obtain the approval of that Central Bank in writing, which approval shall be given after consultation with the Assistant Registrar, and shall be countersigned by him. If the society is not so affiliated, or if the society is so affiliated and is not indebted to the

Central Bank, it shall first obtain the approval of the Assistant Registrar in writing; and (*iii*) if the society itself is a Central Bank, the approval of the Provincial Co-operative Bank, given in consultation with and countersigned by the Registrar, shall first be obtained.

The Maclagan Committee recommended that primary societies should be allowed to use their reserve funds in their own business. The Central Provinces would put all reserve funds at the disposal of the Central Banks to serve as fluid resource to the whole movement. Bengal prefers that the reserve funds should be invested through Central Banks in a readily realisable form and as far as possible outside the Co-operative movement. Madras does not think it desirable that primary societies should be allowed to use their reserve funds in their ordinary business. Their reserve constitutes their only item of fluid resource and is lodged with Central Banks, which are in a position to return it, in whole or in part, to the primary societies at a moment's notice; the continuance of this state of things seems essential as a means of enabling primary societies to meet unexpectedly heavy demands and also as a means of providing a readily available asset in the event of their insolvency.[1] Where the reserve fund is but a fraction of the total liabilities it must be carefully preserved; where it amounts to a large proportion of the total liabilities there can be little objection to its free employment as working capital.

The Madras Committee, therefore, recommended that where the reserve fund of primary societies exceeds 20 per cent. of their working capital, any excess may be used by societies in their own business. The new rule has been reproduced above.

The writer of this book has repeatedly requested defenders of this attitude to take pencil and paper and show how the position of a primary credit society is in any way strengthened or improved by refusing to allow it to use its reserves in its own business. The above rule seems to him merely a device to enable the financing bank to make money at the primary society's expense. He has never heard from any source a single sound argument in its favour. Bombay has a rule: The reserve fund of any registered society may be utilised in the business of the society or be invested or deposited. The Registrar may, for reasons to be communicated in writing to the society, by general or special order,

[1] *Cf.* Opinions published in the *Gazette of India*.

direct that the fund be deposited or invested The Indian Central Banking Enquiry Committee wrote that it was safer to keep the reserve fund invested in the Central Banks and not to permit the societies to lend it to their members The opinion might have carried more weight if the Committee had illustrated it by specimen balance sheets of a society at, say, ten-yearly intervals

The *object* of the reserve fund must not be illegal, otherwise the society may be cancelled (English Acts) Any allocation of this fund to objects not specified in the by laws would be illegal For instance it should not be applied to political or purely religious purposes, such as a home for decrepit cows

(*q*) prescribe the extent to which a society may limit the number of its members,

In Germany, Belgium, Austria, Italy,[1] Greece California,[2] Alberta, etc, the law only applies to Co operative Societies which do not limit the number of their members[3] and it is very important that Government should have the power to make rules to prevent societies from becoming close corporations for the benefit of a few individuals who may develop into pure dividend hunters It is a condition of the enjoyment of concessions from the State that they be open to all For instance, English stores societies would become liable to income tax if they limited the number of their members They adhere to the old principle that the share-list shall never be closed[4] A Co operative Society which does not care to receive new members but prefers to make profit at the expense of outsiders, is a Co operative Society in name only The principle of free admission to a Co operative Society for all willing to join is characteristic It would be considered directly contrary to the idea of co operation if a society were to fix in its statutes the number of members so that it would be impossible to increase them[5] The true Co operative Society is open to all who have the qualifications—no one is to be excluded because he is a big

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[1] Societies may prescribe conditions for the admission of new members, they may not absolutely veto such admission by fixing on a certain number which may not be exceeded (Monographs II, p 128)

Powell, p 47

[3] Japan seems to be exceptional as its law allows a society to limit the number of members Herrick, p 434

[4] *Cf* Schloss on Industrial Co operation, p 347

[5] Co operation in Finland, p 18

farmer or a little farmer or a tenant farmer or for any other reason The membership must not be exclusive It must be democratic It cannot take in a certain group and leave another group out provided they all have the same needs to be met [1] No *bona fide* applicant of good character resident within the area of its operations should be refused admission [2] There is a certain temptation when a society is prospering as the result of a few men s work to exclude new comers in order that they may have no share in the profits—but there can be no worse abuse than this of the co operative principle [3] The above quotations make it clear that no arbitrary limit should be permitted to the number of members and the first (1906) and second (1907) conferences of Registrars adopted this view The Committee also refrained from suggesting a definite numerical maximum but thought that a society is apt to become unmanageable if its members exceed a total that might vary from 50 to 100 [4] Unfortunately this very important principle that co operation must be open to all has sometimes been overlooked The Bengal and Central Provinces model by laws restrict the number of members in a credit society to 50 which is not to be exceeded without the written sanction of the Registrar The Bombay rules (1919) prescribed that a credit society *shall* make a by law in respect of the maximum number of members that may be admitted but this was soon abandoned [5] It however still requires a by law to be framed fixing the maximum number of members that may be admitted (1927) In many Central Banks a limit has been imposed to the number of shareholders with the result that new societies sometimes cannot obtain a share So long as the number of shares is not limited their value cannot go above *par* the dividend is automatically kept down to a rate approximating to the interest rate on deposits and members do not regard the reserve fund as their property Restrict shares and therefore membership and all these evils follow There should be one general rule No society shall fix any limit to the number of its members And to this there might be the single exception permitting Central Banks to limit

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American Commission Observations Part I 1 20

Smith Gordon Co operation for Farmers p 8

[3] *Ibid* p 70

[4] The average for rural credit societies in other countries is Germany, 94 India 41 United Kingdom 84 Japan 105 Russia 76 Austria 130 Italy 40 to 60 Finland 40 to 0

[5] See Annual Report for 1919 para 14 It has been found unworkable and has been definitely abandoned

the number of individual members. But Bengal has a rule imposing a limit of 50 in the case of societies with unlimited liability, without the sanction of the Registrar. The number of members may be restricted :—

(1) by the conditions imposed in section 6, i.e., by the exclusion of certain classes or descriptions of people ;

(2) by careful selection of applicants for election, but a mere desire for exclusiveness must be no ground for rejection ;

(3) by fixing a minimum number of shares to be taken up or (in a trading society) a minimum amount of purchases to be made.

The most satisfactory method of preventing a society from becoming too unwieldy is to restrict the area from which members may be drawn.

The question is of importance in the case of credit societies where mutual personal knowledge is essential ; but large membership is not generally regarded as a drawback in other societies such as stores and supply societies.

(*r*) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

Distribution of profits in unlimited liability societies.[1] —This is to enable Government to check any profit-seeking tendency. Raiffeisen was opposed to any division of profits by way of dividend and under this clause Government can by rule prevent shareholders from dividing amongst themselves the surplus which should be employed in cheapening the services performed by the society. The general rule (section 33) is that a society with unlimited liability should not distribute profits among its members. Under section 8 of the former Act no rural society could distribute profits until the reserve fund had attained certain proportions and

[1] The Law of Nebraska (U. S. A.) defines a co-operative association as one which authorises the distribution of its earnings in part or wholly, on the basis of, or in proportion to, the amount of property bought from, or sold to, the members, or of labour performed, or other service rendered to the corporation (Powell, p. 46).

the rate of interest had been reduced to an extent determined by rules or by laws The Government of India did not intend that profits of a society should be divided except where there are shares Under the Friendly Societies Act societies with unlimited liability may not distribute profits so long as they receive deposits from non members

In the Punjab societies of the old type can pay a dividend after 11 years but the general tendency is to make profits indivisible In Bengal in societies with shares and unlimited liability a dividend can with the sanction of the Registrar be distributed on shares up to a maximum of $9\frac{3}{8}$ per cent of the paid up portion In the United Provinces such a distribution can only be made after ten years and on fully paid up shares

Maximum rate of dividend—As profit seeking is to be avoided there is a general consensus of opinion in favour of a strict limitation of the dividend Mr Wolff writes unlimited liability forms a temptation to the allowance of a large dividend to capital It has become very general and is answerable for a great deal of bad practice The co operative principle is that capital should receive exactly the interest which is usual for it in the market and no more so that a maximum is fixed There must be only one interest in the bank and that the consumers Co operative institutions belie their own character and object in allowing profit beyond the current rate of interest to capital

The Committee held that in all ordinary cases a maximum limit should be fixed so as to prevent the neglect of co operation in favour of individual profit The maximum suggested was the ordinary rate charged by a society on its loans In the case of Central Banks it might be two or three per cent over the rate paid on deposits[1] The Committee would have adhered more closely to established precedent if they had advised that the dividend in primary societies should not exceed the rate paid on deposits In England the maximum dividend on capital (usually called interest) is now generally five per cent

The Sixth Conference of Registrars recorded the opinion that dividends should be limited by rule of the Local Government so as to strengthen the hands of the Registrar This

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[1] The Government of India have approved of this

has been adopted Burma allows 20 per cent Bihar and Orissa 12½ the Punjab 10 Coorg 10 Madras 9 Bombay in its new Act fixes the maximum at 10 per cent But it omits the restriction on a bonus and a bonus is not uncommon The United Provinces limit it to 10 per cent on the share capital actually paid up provided that if in a District or Central Bank the accumulated reserve fund exceeds one quarter of the nominal share capital of the bank at the time this limit may be raised to 12 per cent by special order of the Registrar In Bengal in limited liability societies a dividend of 12½ per cent on the amount paid up is allowed but the Registrar can sanction more than this [1] In some provinces (Burma and Madras) the by laws of a few central banks contain provision for payment of dividends to individual shareholders in preference to or at a higher rate than society shareholders Where the former retain full voting power for the election of the directorate this distinction finds little support amongst good co operators but where they have lost control owing to the growing voting power of society members it may be less objectionable to treat them as preference shareholders The French law of 1894 relating to Societies of Credit Agricole prescribes that after paying expenses and interest on loans and capital three fourths of the profits shall go to reserve and the balance shall be divided between the agricultural associations and between their members in proportion to the profits derived from their respective operations It shall not in any case be divided in the form of a dividend between the members of the society As Sir F Nicholson remarks this is the original Rochdale principle The Rochdale Pioneers' rules were that the share capital should bear a fixed rate of interest and profits should be divided *pro rata* upon the amount of purchases made by each member (market prices being charged originally) This is now known as the patronage rule In England what is allowed on capital is called interest and not dividend This latter term is used to refer to the rebate granted to purchasers The English congress (1903) resolved that abnormally high dividends are injurious to the progress of the co operative movement as the payment of such dividends involves the charging of high prices which has a tendency to diminish trade and to exclude from the

[1] The recent orders of the Government of India approving of the Committee s proposal to limit dividends to a rate not exceeding 9 or 3 per cent above the rate paid on deposits will probably serve to reduce these maxima to 8 or 9 per cent In the Punjab this has already been given effect to

benefits of co operation those for whom its advantages are chiefly intended It puts the maximum at half a crown in the pound or 12½ per cent The resolution with necessary verbal changes applies to credit societies This difference between interest on capital and the bonus to members is important The latter is not assessable to income tax but the former should be (and in England is so)

The English and Irish model rules for agricultural societies allow five per cent on share capital thereafter half profits go to reserve until this equals the share capital then five per cent as a bonus to employees and the balance may be distributed to members in proportion to their transactions

Roumania allows dividends on capital not exceeding 15 per cent in the peoples banks and ten per cent in other Co operative Societies

The distribution of profits requires care The English Acts insist that the rules shall provide for the profits being appropriated to any purposes stated therein or determined in such manner as the rules direct The purpose must not be illegal A dividend should only be declared by a society in general meeting and no dividend should exceed the amount recommended by the Directors or Managing Committee *Interim* dividends should not be allowed No dividend should be paid otherwise than out of profits actually realised (But there may be a special reserve set apart for equalising dividends)

The Madras Committee considered that if the dividend of a Central Bank in any year falls below the maximum the shortage may be made up in subsequent years when the profits allow as an incentive to the collection of overdue interest

Bombay has a rule —

Without the sanction of the Registrar no part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members in any case in which the entire expenditure incurred by such society during the year has not been debited in the Annual Profit and Loss Account before the net profit was arrived at

In the United Provinces there is a rule —All overdue interest should generally be excluded for the purpose of reckoning profits for distribution among shareholders but

in the case of Central Societies the Registrar may in special cases permit an exemption from this rule in favour of pre ference shareholders when he considers such a course justified or desirable In Madras the Registrar can certify what net profits are In some provinces the balance sheet has to be approved by him or some one authorised by him In Assam it is prescribed that All Co operative Banks or Societies shall be required to make such provisions for bad and doubtful debts as may be required by the Registrar or some person duly authorised by him before any dividend may be declared

Unless such provision has been made or a special exemption (which may be subject to conditions) has been granted by the Registrar or some other person authorised by him in that behalf no Co operative Bank or Society shall take into account unrealised overdue interest for the purpose of payment of dividend or for the purpose of declaring profits

Bombay has a rule —In calculating the profits of a society for the year for the purpose of declaring a dividend or bonus all accrued interest which has been unauthorisedly overdue for more than six months shall be deducted from the gross profits of the year before the net profits are arrived at All accrued interest that has been so deducted from the profits of the year and is actually recovered during the subsequent year may be added to the profits of the subsequent year

(s) subject to the provisions of section 39 determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals and

An appeal from an order cancelling the registration of a society lies to the Financial Commissioner in the Punjab and elsewhere In Bombay and Madras where the Registrar refuses to register a society or refuses approval to the making alteration or abrogation of any by law an appeal may be made to the Government within two months of the date of the communication of the order Generally no provision has yet been made for any other appeal except under the Bombay Act But the Madras Act allows for appeals to the Registrar from orders of a liquidator

(*t*) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator

Madras incorporates its old rules as a substantive section (47) of the Act (*cf* Appendix)

Most provinces have now complete rules, on the following lines —

(*a*) When the Registrar cancels the registration of a society he shall at once publish in the [provincial] Gazette and in such other manner as he may think proper a notice requiring all claims against the dissolved society to be submitted to him or to such person as he may name in that behalf within one month of publication of the notice, liabilities recorded in the account books of a society shall be deemed *ipso facto* to have been duly notified

Note—Assam Bengal Bihar and Orissa have this rule Other provinces do not insist upon a gazette notification but leave it to the liquidator to issue the notice for liabilities

(*b*) When the registration of a society is cancelled under section 40 of the Act or when no appeal has been made under clause 2, section 39 of the same Act against the order of the Registrar under that section cancelling the registration of a society, or where such an appeal has been dismissed the liquidator shall forthwith take charge of the books of the society (Burma, Bengal U P following section 178 Companies Act add and all the property, effects and actionable claims to which the society is entitled) in order to take necessary steps to wind up its affairs

Note—A winding up order has not the effect of vesting the society s property in the liquidator The property remains in the society until dissolution unless disposed of in course of winding up

Bombay has a rule enjoining the liquidator immediately on appointment to tal charge of the bool s property and assets

(*c*) If necessary, the liquidator may institute suits for the recovery of sums due to the society

(*d*) The liquidator shall then proceed to determine the assets and liabilities of the society as they stood on the date of the cancellation of its registration, he shall next determine the contributions to be made by the members and past members of the society respectively to the assets of the society He shall also determine by what persons

and in what proportions the costs of the liquidation are to be borne

The Madras Act empowers the liquidator to determine *from time to time* the contributions to be made or *remaining to be made*

This removes the difficulty as to whether the liquidator may issue further orders when his first distribution fails to bring in the assets

The costs of liquidation include the remuneration of the liquidator, which has priority of all other claims

Note, again, the omission of any reference to deceased members' estates The United Provinces add —He shall draw up a formal order noting the amount to be realised from each member or past member as a contribution and as cost of liquidation The legal representative of a member or past member shall be liable only to the extent of the property of such member or past member which has come to their hands as such Bengal inserts a rule —The interest on deposits from non members and on loans shall run on the same rate as before from the date of liquidation to the date of refund or repayment of the principal

The Madras Act includes nominees, heirs or legal representatives of deceased members

(*e*) For the above purpose the liquidator may issue summonses to persons whose attendance is required either to give evidence or to produce documents He may compel the attendance of any person to whom a summons has been issued and for that purpose issue a warrant for his arrest

Note —A liquidator should also have power to call general meetings from time to time

This power to summons extends not only to member defaulters but also to their sureties including non members

The Madras Act empowers the liquidator to compel the production of any books accounts, documents securities, cash or other properties belonging to or in the custody of the society

(*f*) The liquidator shall send all such notices, summonses or warrants for service to the District or Subdivisional Officer concerned

(*g*) The District or Subdivisional Officer, upon receipt thereof, shall proceed as if such notices, summonses on warrants had been issued by him and shall return them to the liquidator with the record (if any) of the proceedings taken with regard thereto

Note —Most Local Governments appear to agree that on the cancellation of a society s registration the liquidator should be empowered to recover the outstandings by summary procedure, and special legislation to this end has been enacted in several provinces (see notes to section 42)— accordingly in the United Provinces there is a rule —The Registrar may refer a copy of the order passed by the liquidator as finally approved by him to the collector of the district and make a requisition to that officer to recover the amounts noted in it in the same manner as arrears of land revenue Bengal, Bihar and Orissa, etc , have a similar rule adapted to local conditions

(*h*) The liquidator shall keep short notes of the depositions of the persons thus summoned to give evidence

(*i*) The liquidator shall then make an order noting the names of members and past members of the society and the amount to be realised from each as contributions under clause (*b*), sub-section (2) of section 42, and as costs of liquidation under clause (*d*) of the same sub-section

Note—In the United Provinces, the Registrar may issue instructions laying down the principles on which and the manner in which the contributions shall be determined, and the liquidator shall act according to these instructions Any person affected by an order passed by the liquidator may make a representation to the Registrar, who may then pass such orders as he thinks fit

(*j*) This order together with all papers connected with the liquidation shall be submitted to the Registrar for his approval, and he may, if he thinks fit, modify the order or refer it again to the liquidator for further enquiry or other action

Note—In the United Provinces, the liquidator with this order must submit a list of the property of each member and past member and of the assets of the deceased members and past members

The liquidator of a company is subject to the control of the Court here and in rules (*m*) and (*o*) he is subject to the control of the Registrar, who performs many of the functions of the Court.

(*k*) A copy of the above order as finally approved by the Registrar, accompanied, if necessary, by a list of the property of each member or past member against whom the decree will have to be enforced, shall be filed in the Civil Court, having local jurisdiction, be enforced as laid down in clause (*a*), sub-section (5) of section 42

Note—It should be stamped as an application for execution [U P Manual, p 30]

The Bombay Act, section 50 (*b*), and the United Provinces Rules empower a liquidator to compromise the claims of or against the society with the sanction of the Registrar

(*l*) If the Civil Court is unable under the above order to recover the sums assessed against any member or members, the liquidator may frame a subsidiary order or orders against any other member or members up to the extent of the liability of each for the debts of the society This subsidiary order or these subsidiary orders, as finally approved by the Registrar, shall be filed in the Civil Court having local jurisdiction for enforcement until the whole amount due from the members is realised

Note—As an alternative to the Civil Courts Provinces which have enacted special legislation for summary recovery have rules permitting resort to the certificate officer under the Public Demands Recovery Act

(*m*) The liquidator shall submit to the Registrar a quarterly report in such form as the Registrar may prescribe, showing the progress made in the liquidation of the societies placed under his charge

Note.—The liquidator should maintain books recording his actions so as to comply with this rule and that in clause (*o*) below In the United Provinces the Registrar may prescribe the books and cause them to be audited

(*n*) All funds in charge of the liquidator should be kept and deposited in the Post Office Savings Bank or with such other bank or person as may be approved of by the Registrar

Note.—These funds should stand in the liquidator's name

(*o*) After recovery of the dues of the society and the realisation of the contribution and costs of liquidation from the members and past members, the liquidator shall, after meeting the liabilities of the society, wind up the affairs of the society and submit a final report to the Registrar

Some provinces add —

(*p*) The appointment of a liquidator shall be published in the [provincial] Gazette

(*q*) No appeal shall lie from any order of the liquidator under section 42

Madras allows an appeal to the Registrar

The Registrar shall fix the amount of the fee to be paid to the liquidator

This fee shall be included in the costs of liquidation, which shall be payable out of the assets of the society in priority to all other claims Bombay has a rule that when recovery is made by village officers, the liquidator may pay to such officers remuneration at the rate of one per cent of the amount collected by such officers

At the conclusion of the liquidation a general meeting of the dissolved society shall be called at which the liquidator shall summarise the results of his proceedings, shall point out the causes of the failure of the society and shall take a vote as to the disposal of any cash balance that may remain with him

A liquidator may at any time be removed by the Registrar and he shall on such removal be bound to hand over all the property and documents relating to the liquidation to such person as the Registrar may direct

Bombay has incorporated the most important rules in its new Act (see Appendix) but has rules in amplification as well It prescribes that the books etc shall be destroyed by the Assistant Registrar after the expiry of two years from the date of the order cancelling registration

(3) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication

For provisions applying to such a condition see General Clauses Act section 23 The authority must publish a draft in such manner as the authority deems to be sufficient and with it a notice specifying a date on or after which the draft will be taken into consideration it shall consider any objection or suggestion which may be received before the date so specified Publication in the Gazette of a rule, purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made

(5) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act

In the United Provinces power to make rules under section 43 (2) clauses (*h*) and (*i*) has been delegated to the Registrar So also in the Punjab where he can in addition make rules under clause (*o*) prescribing for any society the maximum loan which may be made to any member without his prior consent These delegations save no time owing to the necessity for following the procedure under clause (4) above and so Madras omits clause (3) Madras has an additional clause —All such rules shall be laid on the table of the Legislative Council

Miscellaneous

Recovery of sums due to Government

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land-revenue

Burma has "shall" for 'may"

(2) Sums due from a registered society to Government and recoverable under sub-section (1) may be recovered, *firstly*, from the property of the society, *secondly*, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability, and *thirdly*, in the case of other societies, from the members

Burma applies this provision also to sums payable by order of a liquidator on a requisition being made by the Registrar to the Collector, and further empowers Government to frame rules prescribing the remuneration which shall be payable to headmen or others employed to collect these sums which are recoverable in the same manner as arrears of land revenue

In order to stimulate the movement originally it was decided that Government should provide a part of the capital of new societies The loans were repayable in instalments and this section primarily refers to these It applied the takkavi rules to these loans It will be noted that as an exception in favour of the crown, proceedings may be taken against members without the society being wound up

Under this section the costs of audit by a Government auditor may be recovered

Query Cannot the sums be recovered from past members ?

Bombay adds the words "or past members" subject to the provisions as to two years in section 23 and Madras in clause (1) adds former officer or deceased member, and in clause (2) adds or the estates of deceased members In both cases the liability is subject to sections

23 and 24 of this Act (combined as section 25 of the Madras Act)

Power to exempt societies from conditions as to registration

45. Notwithstanding anything contained in this Act, the Local Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration

If the society were not registered it would not be a corporate body or enjoy the exemptions under section 28

This section and the next following are thus explained in the Government of India resolution "It was impossible to frame any set of general provisions which should cover all conceivable forms in which the principle of co operation might usefully be applied for the benefit of small folk in India It was impossible to provide for all eventualities a general section has, therefore, been added which provides that the Local Government may permit any association whatever to be registered as a society under the Act, and may exempt any society thus specially registered from any of its provisions, or may modify any of those provisions in their application to any such society The position, therefore, stands as follows —

In the body of the Act have been included those provisions which it is believed will be suitable to the type of Co operative Societies that is most likely to come into existence in this country, and these provisions will constitute the normal law, which will apply of its own force to these societies in general But a Local Government will have an absolutely free hand to depart from or vary them, on condition only that it does so by special order in each case and after full consideration of the circumstances which justify the departure Of course, it is intended that this power should be exercised only on behalf of societies the aims of which are consonant with the objects which the Act is intended to promote

Power to exempt registered societies from provisions of the Act

46. The Local Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society

with such modifications as may be specified in the order

E g , the restrictions as to shareholdings in section 5 (under which examples are given)

Unlike section 45 above, this section applies only to societies which have been registered Bombay has the words " society or class of societies," and adds provided that no order to the prejudice of any society shall be passed without an opportunity being given to such society to represent its case

The Committee consider that this power may be used where difficulty is experienced in raising sufficient share-capital for Central Banks

It may also exempt any registered society from the exemption as to income tax (section 28) and should do this if a Central Bank for instance puts profit making before its real object of facilitating the working of Co operative Societies or if a society deals with non members, or limits unduly the number of its members [*cf* section 42 (*q*)]

Bombay supplies the instance of the Sanikatta Salt workers' Society

It may also modify the restriction as to residence in section 6 (1) (*a*)

Punjab examples are exemption of Thrift Societies from section 33, and of an old regimental society from the obligation to put by 25 per cent of profits to reserve

Prohibition of the use of the word co operative

47. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word 'co operative" is part without the sanction of the Local Government

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation

Date 1st March, 1912 The Punjab Co operative Bank Ltd was registered before this date and has nothing to do with co operation or the co operative movement

Bombay and Burma repeat this word and so postpone the date to 1925 and 1927 respectively, but Madras avoids this pitfall by a reference to the Act of 1912

There are, unfortunately, several instances of Registrars of Joint Stock Companies in different provinces overlooking this section and registering ordinary companies with the word "co operative" included in the name

The South African Acts of 1922 and 1924 compel all previously existing institutions to register under the new Act or omit the word "co operative"

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor

This is the only penal section provided for carrying out the provisions of the Act and is directed against non-co operators

The word "co operative" has been grossly misused in America, and many failures of poorly managed private joint stock enterprises have been charged against the co operative method, to its discredit of course Every State should have a law prohibiting the use of the word "co operative" in the name of any legal corporation unless that corporation is organised in conformity with these characteristic essentials of the Co operative Society[1]

Indian Companies Act 1882, not to apply

48. The provisions of the Indian Companies Act, 1882, shall not apply to registered societies

This is the basis of the whole Act The companies Act is primarily a law governing organisations for pecuniary profit, it is designed to meet the needs of capital In the early days, the Companies Acts of various countries were the

[1] American Commission Observations, Part I p 22 Wisconsin and New York have adopted this

only Acts under which Co operative Societies could obtain a legal status As the number of societies increased, the law had to be altered to meet their requirements, and, in order to confine the new enactments to the societies it became necessary to attempt legal definitions of Co operative Societies, some of which have been given in the first part of this book

But the Co operative Societies Act is largely based upon the Indian Companies Act, giving generally the powers of a Court to the Registrar See notes to section 4, *post* The Indian Companies Act applies to all companies, associations, or partnerships for banking or acquisition of gain of 10 and 20 members respectively unless they are registered under this Act

For Indian Companies Act, 1882, now *read* Indian Companies Act, 1913, as corrected by Bombay, Burma and Madras Acts

"The elaborate provisions of the Companies Act, however necessary in the case of combinations of capital on a large scale, are wholly unsuited to societies of the kind it is desired to encourage The first thing to be done (in starting Co operative Societies) was to take them out of the operation of the general law on the subject and to substitute provisions specially adapted to their constitution and objects [Government of India]"

Exemption from the Companies Act carries with it exemption from payment of fees for registering various documents, balance sheet, etc The exemption does not extend to Co operative Societies not registered under this Act

49. Every society now existing which has been registered under the Co operative Credit Societies Act, 1904, shall be deemed to be registered under this Act, and its by laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded

Saving of existing societies

Local Acts have to add or under the Co operative Societies Act, 1912 Madras adds a clause (2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Acts shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act

Repeal

50. The Co operative Credit Societies Act, 1904, is hereby repealed

The Bombay, Burma and Madras Acts, of course, repeal the present Act as well By so doing the societies in these provinces have inadvertently lost the privilege of acquiring land under the Land Acquisition Act, but Madras has a section 64 which runs All references to the Co operative Societies Act 1912 occurring in any enactment made by any authority in British India and for the time being in force in the Presidency of Madras shall in its application to the said Presidency, be constructed as references to this Act

APPENDIX I.

BO BAY ACT No. VII OF 1925.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 4th December, 1925)

An Act to consolidate and amend the law relating to Co operative Societies in the Presidency of Bombay

WHEREAS it is expedient further to facilitate the formation and working of Co operative Societies for the promotion of thrift, self help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living better business and better methods of production and for that purpose to consolidate and amend the law relating to Co operative Societies in the Presidency of Bombay, and whereas the previous sanction of the Governor General required by sub section (3) of section 80 A of the Government of India Act has been obtained for the passing of this Act It is hereby enacted as follows — 5 & 6 Geo V c 61

Preliminary

1. This Act may be called the Bombay Co operative Societies Act 1925 Short title

2. This Act extends to the whole of the Presidency of Bombay Extent

3. In this Act unless there is anything repugnant in the subject or context— Definitions

(*a*) "by laws" means by laws registered under this Act and for the time being in force and includes a registered amendment of such by laws,

(*b*) "Committee" means the Committee of Management or other directing body to whom the management of the affairs of a society is entrusted,

(*c*) "Member"—*see s* 2 (*c*) *of Act II of* 1912,

(*d*) "Officer"—*see s* 2 (*d*) *of Act II of* 1912,

(*e*) "Society" means a society registered or deemed to be registered under this Act,

(*f*) "Registrar"—*see s* 2 (*f*) *of Act II of* 1912

(*g*) "Rules"—*see s* 2 (*g*) *of Act II of* 1912,

(*h*) (1) a "Resource society" means a society formed with the object of obtaining for its members the credit, goods or services required by them,

(2) a "Producers' society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society,

(3) a "Consumers' society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by the by laws of such society the profits accruing from such supply and distribution,

(4) a "Housing society" means a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by laws,

(5) a "General society" means a society not falling under any of the four classes above mentioned

The Registrar shall classify all societies under one or other of the above heads and his decision shall be final

A society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class

A list of all such societies so classified shall be published annually in the Bombay Government Gazette

Registration

4. *See s* 3 *of Act II of* 1912

Societies which may be registered

5. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co operative

principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability

Provided that, unless Government by general or special order otherwise directs—

(1) the liability of a society of which a member is a society shall be limited

(2) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists and of which no member is a registered society, shall be unlimited and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of all obligations of such a society

Provided further that when the question whether the liability of a society is limited or unlimited has once been decided by the Registrar at the time of registration his decision shall be final

Restrictions on interest of member of society with limited liability and a share-capital

6. Where the liability of the members of a society is limited by shares, no member other than a society shall—

(*a*) hold more than such portion of the share capital of the society, subject to a maximum of one fifth, as may be prescribed by the rules or

(*b*) have or claim any interest in the shares of the society exceeding three thousand rupees provided that if the society is a housing society a member may have or claim an interest in the shares of the society not exceeding Rs 10,000

7. *See s* 6 *of Act II of* 1912

Power of Registrar to decide certain questions

8. When any question arises whether for the purpose of the formation, or registration or continuance of a society under this Act a person is an agriculturist or a non agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final

9. *See s* 8 *of Act II of* 1912

10. *See s* 9 *of Act II of* 1912

11. *See s* 10 *of Act II of* 1912.

Annual general meeting

12 Every society shall within a period of three months after the date fixed for making up its accounts for the year under the rules for the time being in force call a general meeting of its members

Special general meetings

13 A special general meeting may be called at any time by a majority of the Committee and shall be called within one month—

(1) on the requisition in writing of one fifth of the members of the society or

(2) at the instance of the Registrar

Change of name its effect

14 A society may by a resolution of a general meeting and with the approval of the Registrar change its name but such change shall not affect any right or obligation of the society or of any of its members or past members and any legal proceedings pending may be continued by or against the society under its new name

Amalgamation or transfer of societies

15 (1) Any two or more societies may with the approval of the Registrar by a resolution passed by a three fourths majority of the members present at a special general meeting of each such society held for the purpose amalgamate as a single society provided that each member has had clear fifteen days written notice of the resolution and the date of the meeting Such an amalgamation may be effected without a dissolution or a division of the funds of the amalgamating societies The resolution of the societies concerned shall on such amalgamation be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society

(2) Any society may by a resolution passed in accordance with the procedure laid down in sub section (1) transfer its assets and liabilities to any other society which is prepared to accept them

Provided that when any such amalgamation or transfer of assets and liabilities involves the transfer of its liabilities by any society to any other society it will not be made without giving three months notice to the creditors of both or all such societies

Provided further that if a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer the amalgamation or transfer shall

not be made until the dues of such creditor or creditors have been satisfied

Amendment of the by-laws of a society

16. (1) No amendment of the by laws of a society shall be valid until approved by the resolution of a general meeting and registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may register the amendment

(3) When the Registrar registers an amendment of the by laws of a society he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered

Rights and liabilities of members

No rights of membership to be exercised till due payments are made

17. No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the by laws of such society

Votes of members

18. (1) No member of any society shall have more than one vote in its affairs, provided that in the case of an equality of votes the chairman shall have a casting vote

(2) A society which has invested any part of its funds in the shares of another society, may appoint one of its members to vote in the affairs of such other registered society

Restrictions on transfer of share or interest

19. (1) The transfer or charge of the share or interest of a member in the capital of a society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless—

(*a*) he has held such share or interest for not less than one year, and

(*b*) the transfer or charge is made to the society or to a member of the society or to a person whose application for membership has been accepted by the society

Duties of societies

Address of societies

20 Every society shall have an address registered in accordance with the rules to which all notices and communications may be sent and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change

Copy of Act etc to be open to inspection

21 Every society shall keep open to inspection at all reasonable times at the registered address of the society—

(*a*) a copy of this Act

(*b*) a copy of the rules governing such society

(*c*) a copy of the by laws of such society and

(*d*) a register of its members

Audit

22 (1) The Registrar shall by himself or by some person authorised by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year

(2) The audit under sub section (1) shall include an examination of overdue debts if any the verification of cash balance and securities and a valuation of the assets and liabilities of the society

(3) The Registrar or other person auditing the accounts of any society shall have free access to the books accounts and vouchers of such society and shall be allowed to verify its cash balances and securities

The Directors Managers and other officers of the society shall furnish to the Registrar or other person appointed to audit the accounts of a society all such information as to its transactions and working as the Registrar or such person may require

(4) The Registrar and every other person appointed to audit the accounts of a society shall have power when necessary—

(*i*) to summon at the time of his audit any officer agent servant or member of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs or

(*ii*) to require the production of any book or document relating to the affairs of any cash or securities belonging to the society by the officer agent servant or member in possession of such book document cash or securities

Privileges of societies

23. *See s* 18 *of Act II of* 1912

24. Subject to any prior claim of Government in respect of land revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, Prior claim of society.

(*a*) any debt or outstanding demand owing to a society by any member or past member shall be a first charge (*i*) upon crops or other agricultural produce raised in whole or in part with a loan taken from the society by such member or past member, and (*ii*) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials for manufacture or workshops, godown or place of business, supplied to or purchased by such member or past member in whole or in part from any loan whether in money or goods given him by the society,

Provided that nothing contained in this clause shall affect the claims of any *bona fide* purchaser or transferee for value without notice of any such crops or other agricultural produce, cattle, fodder for cattle or raw materials for manufacture or workshops or agricultural or industrial implements, and

(*b*) any outstanding demands or dues payable to a housing society by any member or past member in respect of rent, shares, loans, or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immoveable property of the society

25. *See s* 20 *of Act II of* 1912

26. *See s* 21 *of Act II of* 1912

27. (1) On the death of a member of a society such society may within a period of one year from the death of such member transfer the share or interest of the deceased member to a person or persons nominated in accordance with the by laws of the society It duly admitted a member of the society, in accordance with the rules or the by laws of the society, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or by-laws Transfer of interest on death of member

Provided that such nominee heir or legal representative, as the case may be may require that payment shall be made by the society within one year from the death of the member of the value of the share or interest of such member as certained as afore said

(2) A society shall subject to the provisions of section 25 and unless prevented by an order of a competent court pay to such nominee heir or legal repre entative as the case may be all other moneys due to the deceased member from the society

(3) All transfer and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person

28 *See s 23 of Act II of 1919*

29 *See s 24 of Act II of 1912*

30 *See s 25 of Act II of 1912*

Admissibility of copy of entry as evidence

31 (1) A copy of any entry in any book register or list regularly kept in the course of busine in the possession of a society shall if duly certified in such manner as may be prescribed by the rules be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where and to the same extent to which the original entry would if produced have been admissible to prove such matter

(2) In the case of such societies as Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society s books the contents of which can be proved under sub section (1) or to appear as a witness to prove the matters transactions and accounts therein recorded unless by order of the Court or a Judge made for special cause

32 *See s 27 of Act II of 1912*

Power to exempt from income tax stamp duty registration and Court fees

33 (1) The Governor General in Council by notification in the Gazette of India may in the case of any society or class of societies remit the income tax or super tax payable in respect of the profits of the society or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society

(2) The Local Government by notification in the Bombay Government Gazette may, in the case of any society or class of societies remit—

(*a*) the stamp duty with which under any law for the time being in force instruments executed by or on behalf of a society or by an officer or member and relating to the business of the society or any class of such instruments or awards of the Registrar or arbitrators under this Act are respectively chargeable, and

(*b*) any fee payable under the law of registration and of court fees for the time being in force

Government may give loans or guarantee interest

33A. With such safeguards as may be prescribed by rules in this behalf Government may give loans to societies or guarantee the payment of interest on debentures issued by them

Property and funds of societies.

Restrictions on loans

34. (1) Except with the general or special sanction of the Registrar a society shall not make a loan to any person other than a member

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property

(3) Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any society or class of societies

35. *See s* 30 *of Act II of* 1912

Restrictions on other transactions with non-members

36. Consumers', Producers' and Housing Societies may to the extent permitted by their by-laws trade with persons who are not members, but the transaction of a Resource society with persons other than members except as provided under section 34 or 35 shall be subject to such prohibitions and restrictions if any as Government may by rules prescribe

Investment of funds

37. A society may invest or deposit its funds—

(*a*) in the Government Savings Bank, or

(*b*) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 or

(*c*) in the shares or on the security of any other society provided that no such investment shall be made in the shares of any society other than one with limited liability or

(*d*) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or

(*e*) in any other mode permitted by the rules.

Restrictions on dividend.

38. No society shall pay a dividend to its members at a rate exceeding 10 per cent.

Reserve Fund.

39. (1) Every society which does or can derive a profit from its transactions shall maintain a reserve fund.

(2) In the case of a Resource or Producers' society at least one-fourth of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least one-tenth of the net profits of the society each year shall be carried to the reserve fund, and such reserve fund may be used in the business of the society or may be invested, subject to the provisions of section 37, as Government may by general or special order direct, or may, with the previous sanction of Government, be used in part for some public purpose likely to promote the objects of this Act or for some purposes of provincial or local interest.

Restrictions on distribution of profits.

40. Subject to the provisions of section 38 the balance of the profits of a society after making the prescribed provision for the reserve fund may, together with any available profits of past years, be distributed among its members, and in the case of Consumers' and Producers' societies, also among persons who are not members, to the extent and under the conditions prescribed by the rules or by the by-laws of such societies, provided that:—

(*a*) in the case of a Resource society on a basis of unlimited liability in which the members do not hold shares, no distribution of profits shall be made without the general or special order of Government in this behalf; and

(*b*) in the case of a Resource society on a basis of unlimited liability in which the members hold shares, no such distribution of profits shall be made until 10 years from the date of registration of the society have elapsed.

Provident Fund.

41. Any society may establish a provident fund for its members out of contributions from such members in accordance with by-laws made by the society in this behalf and may contribute to such provident fund from its net profits, after the prescribed payments have been made to the reserve fund, provided that such provident fund shall not be used in the business of the society but shall be invested

under the provisions of section 37 and provided further that no part of such provident fund shall be considered as an asset of the society

Contribution to charitable purpose

42 With the approval of the Bombay Central Co operative Institute and after the payments prescribed by sub section (2) of section 39 have been made to the reserve fund any society may—

(*a*) set aside a sum not exceeding 20 per cent of its net profits and

(*b*) utilise from time to time the whole of such sum in contributing to any public or co operative purpose or to a charitable purpose as defined in section 2 of the Charitable Endowments Act 1890 (VI of 1890)

Inspection of affairs

Inquiry by Registrar

43 (1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution working and financial condition of a society

(2) The Registrar shall hold such an inquiry as is contemplated in sub section (1) of this section —

(*a*) on the requisition of a society duly authorised by rules made in this behalf to make such requisition in respect of one of its members such member being itself a society

(*b*) on the application of a majority of the Committee of the society

(*c*) on the application of one third of the members of the society

(3) All officers and members of the society whose affairs are investigated shall furnish such information in their possession in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated

Inspection of books of indebted society

44 (1) The Registrar may on the application of a creditor of a society inspect or direct some person authorised by him by order in writing in this behalf to inspect the books of the society

Provided that—

(*a*) the applicant satisfies the Registrar that the debt is a sum then due and that he has demanded payment

thereof and has not received satisfaction within a reasonable time; and

(*b*) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection to the creditor.

Costs of inquiry.

45. Where an inquiry is held under section 43 or an inspection is made under section 44 the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding the inquiry or inspection, the officers or former officers, and the members or past members of the society.

Provided that—

(*a*) no order of apportionment of the costs shall be made under this section unless the society or persons liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard;

(*b*) the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

Recovery of costs.

46. Any sum awarded by way of costs under section 45 may be recovered, on application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides, or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

Liquidation and arbitration.

Winding-up.

47. If the Registrar, after an inquiry has been held under section 43 or after an inspection has been made under this section unless the society or persons made by three-fourths of the members of a society present at a special general meeting, called for the purpose or of his own motion, in the case of a society that has not commenced working, or has ceased working, or possesses shares or members' deposits not exceeding Rs. 500, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up, and when necessary, may appoint a liquidator for the purpose and fix his remuneration.

Society may be wound up if membership is reduced.

48. Where it is a condition of the registration of a society that it shall consist of at least ten members who are majors, the Registrar may by order in writing direct the society to be wound up, if at any time it is proved to his satisfaction that the membership has been reduced to less than ten such members.

Effect of cancellation of registration.

49. When the affairs of a society for which a liquidator has been appointed under section 47 have been wound up, or, where no liquidator has been appointed, after two months from the date of an order under section 47, or after confirmation of such order in appeal, the Registrar shall make an order cancelling the Registration of the society, and the society shall be deemed to be dissolved from the date of such order.

Powers of a liquidator.

50. A liquidator appointed under section 47 shall have power with the sanction of the Registrar to do all or any of the following things:—

(*a*) pay any class or classes of creditors in full;

(*b*) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable;

(*c*) to compromise all calls or liabilities to calls and debts, and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist, between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and all questions in any way relating to or affecting the assets or the winding-up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof;

(*d*) from time to time to determine the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officer, to the assets of the society, such contribution including debts due from such members or persons;

(*e*) to institute and defend suits and other legal proceedings on behalf of the society in the name of his office;

(*f*) to issue requisitions under section 59 upon the Collector for the recovery as arrears of land-revenue of any

sum ordered by him to be recovered as dues from members or as a contribution to the assets of the society or to the cost of liquidation;

(*g*) to get disputes referred to arbitration;

(*h*) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising out of such claims, and to pay rateably according to the amount of such debts, the surplus if any being applied in payment of interest from the date of liquidation at a rate to be fixed by the Registrar and not exceeding the contract rate;

(*i*) to determine by what persons and in what proportion the cost of the liquidation shall be borne;

(*j*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding-up the affairs of the society;

(*k*) to fix the time or times within which creditors shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;

(*l*) to carry on the business of the society so far as may be necessary for the beneficial winding-up of the same:

Provided that no liquidator shall determine the contribution, debt or dues to be recovered from a past member or the representative of a deceased member unless opportunity has been given to such past member or to such representative to answer the claim.

Power of Registrar to assess damage against delinquent promoters, etc.

50A. (1) Where, in course of the winding-up of a society, it appears that any person who has taken part in the organisation or management of the society or any past or present chairman, secretary, member of the managing committee or officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

Bar of suit in winding-up and dissolution matters.

51. Save in so far as is expressly provided in this Act no civil court shall take cognisance of any matter connected with the winding-up or dissolution of a society under this Act and when a winding-up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose.

Disposal of surplus assets.

52. After all the liabilities including the paid-up share-capital of a cancelled society have been met, the surplus assets shall not be divided amongst its members but they shall be devoted to any object or objects described in the by-laws of the society and when no object is so described to any object of public utility determined by the general meeting of the society and approved by the Registrar or they may in consultation with them either be assigned by the Registrar in whole or in part to any or all of the following :—

(*a*) an object of public utility of local or communal interest;

(*b*) a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890;

(*c*) the Bombay Central Co-operative Institute, or may be placed on deposit with a Central Co-operative Bank until such time as a new society with similar conditions is registered when with the consent of the Registrar such surplus may be credited to the reserve fund of such new society.

Surplus assets of housing society.

53. Where the society directed to be wound up is a housing society, its assets, both moveable and immoveable, shall for the purposes of winding-up or dissolution of the society jointly vest, subject to all rights and equities, in three persons of whom one shall be nominated by the Registrar, one shall be nominated by the said Society in a general meeting specifically called for the purpose and one shall be nominated by the Bombay Central Co-operative Institute. Such persons shall, for the purpose of winding-up or dissolution of the Society be Joint Liquidators and shall have all the powers of a liquidator under this Act. They may, with the sanction of the Registrar, continue the working of the society, or may, subject to his sanction and in consultation with the members of the society in a general

meeting, reconstruct the society or may sell off the premises of the society to the best advantage of all interests concerned, and when all the liabilities of the society are met may dispose of the surplus assets of the society if any, as provided in section 52

Arbitration

54. If any dispute touching the business of a society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent, or servant of the society or between the society or its committee any officer, agent, member or servant of the society, it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned

A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not

Provided that if the question at issue between a society and a claimant, or between different claimants is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by a regular suit instituted by one of the parties or by the society If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of this section

Attachment before award

55. Where a dispute has been referred to the Registrar under section 54 or to arbitration under clause (*q*) of section 50, the Registrar or his nominee or the arbitrators, as the case may be, if satisfied on inquiry or otherwise, that a party to such arbitration with intent to delay or obstruct the execution of any award that may be made—

(*a*) is about to dispose of the whole or any part of his property, or

(*b*) is about to remove the whole or any part of his property from the jurisdiction of the Registrar,

may unless adequate security is furnished direct the conditional attachment of the said property , and such attachment shall have the same effect as if made by a competent Civil Court

Appeal against award of arbitrator.

56. Any party aggrieved by any decision of the Registrar's nominee made under section 54 or an order passed under section 55 by the Registrar's nominee or arbitrators may within one month of the date of the award or order appeal to the Registrar and the Registrar shall decide the appeal himself.

Finality of order.

57. An order passed in appeal under section 56 shall be final and conclusive. The award of the arbitrators or a decision by the Registrar or his nominee under section 54 shall not be liable to be called in question in any civil or revenue court.

Powers to enforce attendance.

58. Wherever in this Act it is provided that the Registrar or person duly authorised by general or special order in writing by the Registrar in this behalf shall hold an inquiry under section 43 or shall make an inspection under section 44 or shall wind up a society or shall arbitrate, such Registrar, or person authorised, as the case may be, shall have the power to summon and enforce the attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

Money how recovered.

59. (1) Every order passed by a liquidator under section 50, or by the Registrar or his nominee or arbitrators on disputes referred to him or them under clause (*g*) of section 50 or under section 54, every order passed in appeal under section 56 and every order passed by Government in appeal against orders passed under sections 50 and 54 shall, if not carried out, be executed—

(*a*) on a certificate signed by the Registrar or a liquidator by any civil court in the same manner as a decree of such court; or

(*b*) according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue, provided that any application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar.

(*Note.*—Rule 37A says :—" When recovery of arbitration awards is made by village officers the Registrar shall have power to order the expenses of such recovery to be paid out

of the funds of the society or by such party or parties in default as he may think fit according to a scale laid down by the Registrar")

(2) When the property attached in execution of an order referred to in sub section (1) cannot be sold for want of buyers, the same may be handed over to a society with the previous consent of the Registrar on such terms and conditions as may be agreed upon between the Collector and the said society

Offences

Offences

60. It shall be an offence under this Act if—

Default by a society officer or member

(*a*) a society with a working capital of Rs 50,000 or more or an officer or member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything which the society, officer or member is by this Act required to give, send, do or allow to be done or

Wilful neglect or default by a society etc

(*b*) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorised by him in writing in this behalf or

Wilful furnishing of false information

(*c*) a society or an officer or member thereof wilfully makes a false return or furnishes false information or

Disobedience of summons requisition or order

(*d*) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorised to do so under the provisions of this Act

Penalty for offences not otherwise provided for

61. Every society, officer or member of a society or other person guilty of an offence under this Act for which no penalty is expressly provided herein shall be liable to a fine not exceeding Rs 50

Prohibition of the use of the word 'co-operative'

62. (1) No person other than a registered society shall, without the sanction of Government, trade or carry on business under any name or title of which the word "co-operative" or its vernacular equivalent forms part

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor

Cognizance of offences

63. (1) No court inferior to that of a Presidency, Magistrate or a Magistrate of the first class shall try any offence under this Act

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognisable

(3) No prosecution under this Act shall be lodged without the previous sanction of the Registrar, which shall not be given except after hearing the party concerned

Appeals and revision

Appeals

64. An appeal against an order or decision of or sanctioned by the Registrar under sections 10, 16, 45, 47, 50, 50A or 54 may be made by any party aggrieved or affected by the order or decision to Government within two months of the date of the communication of the order

Power of Government and the Registrar to call for proceeding of Subordinate Officers and to pass orders thereon

64A. The Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer If in any case, it shall appear to the Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed the Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit

Miscellaneous

Recovery of sums due to Government

65. (1) All sums due from a society or from an officer or member or past member of a society as such to Government, may be recovered according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue

(2) Sums due from a society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society of which the liability of the members is limited, from the members or past members subject to the limit of their liability; and, thirdly, in the case of other societies, from the members or past members.

(3) The liability of past members shall in all cases be subject to the provisions of section 28.

66. *See s.* 45 *of Act II of* 1912.

Power to exempt societies from provisions of Act.

67. Government may, by general or special order to be published in the *Bombay Government Gazette*, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order; provided that no order to the prejudice of any society shall be passed without an opportunity being given to such society to represent its case.

Indian Companies Act not to apply.

68. The provisions of the Indian Companies Act, 1913, shall not apply to societies, registered under this Act.

Branches, etc., of societies, outside the Presidency.

69. Every Co-operative Society registered outside the Bombay Presidency, which has or establishes a branch or place of business in the Bombay Presidency shall, within six months from the commencement of this Act or from the establishment of such branch or place of business, file with the Registrar a certified copy of the by-laws and amendments and, if these are not written in the English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similar societies in the Bombay Presidency in addition to those submitted to the Registrar of the province where it is registered.

Notice necessary in suits.

70. No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

71. (1) Government may, for the whole or any part of the presidency and for any society or class of societies, make rules to carry out the purposes of this Act Rules

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*), (*b*), (*c*) and (*d*) as in Act II of 1912,

(*e*) provide for ascertaining the value of a deceased member's share or interest,

(*f*), (*g*), (*h*) and (*i*) as in Act II of 1912,

(*j*) provide for the persons by whom and the form in which copies of documents or entries in books of societies may be certified, and for the charges to be levied for the supply of such copies,

(*k*) as in Act II of 1912,

(*l*) as in (o) Act II of 1912,

(*m*) prescribe the prohibitions and restrictions subject to which societies may trade with persons who are not members,

(*n*) and (*o*) as in (*p*) and (*q*) of Act II of 1912,

(*p*) prescribe the conditions under which profits may be distributed to the members of a society and the maximum rate of dividend which may be paid by societies,

(*q*) prescribe the procedure to be followed in presenting and disposing of appeals,

(*r*) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that shares shall not appreciate in value and that necessary capital shall be available for the society as required

(*s*) provide that persons qualified under the by laws of a society shall not be excluded from membership without due cause,

(*t*) prescribe the procedure to be followed by a liquidator appointed under section 47,

(*u*) prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and for fixing and levying the expenses of determining the dispute,

(*v*) provide for the issue and service of processes and for proof of service thereof,

(*w*) provide for the writing off of bad debts,

(*x*) as in (*e*) of Act II of 1912,

(*y*) provide for the withdrawal and expulsion of members and for the payments to be made to them and for the liabilities of past members,

(*z*) provide for the nomination of a person to whom the interest of a deceased member may be paid or transferred,

(*aa*) prescribe the cases in which an appeal shall lie from the order of a liquidator appointed under section 47

(*bb*) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same,

(*cc*) prescribe the procedure to be followed for the custody of property attached under section 55,

(*dd*) provide for the payment of contributions at such rates and subject to such conditions as may from time to time be prescribed by Co operative Societies to any provident fund which may be established for the benefit of officers and servants employed by them, and

(*ee*) prescribe the period and terms under which Government aid may be given to Co operative Societies and the terms under which the Government may guarantee the payment of interest on debentures issued by registered societies

(3) Government may, subject to such conditions if any, as it thinks fit delegate all or any of its powers to make rules under this section to any authority specified in the order of delegation

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication

(5) The rules so made shall be laid on the table of the Bombay Legislative Council for one month previous to the next session thereof and shall be liable to be rescinded or modified by a resolution of the said Council tabled at its next session

Saving of existing societies X of 1904, II of 1912

72. (1) Every society now existing which has been registered under the Co operative Credit Societies Act, 1904, or under the Co operative Societies Act, 1912 shall be deemed to be registered under this Act, and its by laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted, under the said Acts shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act

Repeal

73. The enactments specified in the Schedule are hereby repealed in so far as they apply to the Bombay Presidency to the extent specified in the fourth column of the said Schedule

SCHEDULE

Enactments repealed

(See section 73)

Year	No	Short title	Extent of repeal
		Acts of the Governor General in Council	
1912	II	The Co operative Societies Act 1912	The whole
1920	XXXVIII	The Devolution Act, 1920	So much as relates to Act II of 1912
		Act of the Governor of Bombay in Council	
1920	I	The Bombay Land Revenue Code (Amendment) Act 1920	The whole

APPENDIX II.

BUR A ACT No. VI OF 1927.

PASSED BY THE LEGISLATIVE COUNCIL

(*Received the assent of His Excellency the Governor on the 18th February*, 1927, *and of His Excellency the Governor-General on the 4th May*, 1927, *and published in the* Burma Gazette *of the 4th June*, 1927)

An Act to consolidate and amend the law relating to Co operative Societies in Burma

WHEREAS it is expedient to consolidate and amend the law relating to Co operative Societies in Burma, And Whereas the previous sanction of the Governor General under sub section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act, It is hereby enacted as follows —

Preliminary

Short title and extent

1. (1) This Act may be called the Burma Co operative Societies Act, 1927 , and

(2) It extends to the whole of Burma

Definitions

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) " by laws " means the registered by laws for the time being in force ,

(*b*) " Committee " as in Act II of 1912,

(*c*) a society is said to be " limited " where the liability of its members for the debts of the society in the event of its liquidation is declared by its by laws to be limited (*a*) to the amount payable on the shares respectively held by the members,

or (*b*) to such amount as the members may respectively undertake to contribute to the assets of the society,

(*d*) "Officer" as in Act II of 1912,

(*e*) "Co operative Society" means a society registered under this Act,

(*f*) "Registrar" as in Act II of 1912,

(*g*) "Rules" as in Act II of 1912

Registration

3. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co operative principles or a society established with the object of facilitating the operations of such a society may be registered under this Act

Prohibition of the use of the word co operative

4. (1) No person other than a Co operative Society shall without the sanction of the Local Government trade or carry on business under any name or title of which the word "co operative" or its vernacular equivalent is part provided that nothing in this sub section shall apply to the use by any person or his successor in interest of any name or title under which he lawfully traded or carried on business at the date on which this Act comes into operation

(2) Whoever contravenes the provisions of sub section (1) shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor

Saving of existing societies X of 1904 II of 1912

5 Every society now existing which has been registered under the Co operative Credit Societies Act 1904 or the Co operative Societies Act 1912 shall be deemed to be registered under this Act and its by laws shall so far as the same are not inconsistent with the express provisions of this Act continue in force until altered or rescinded

Power to exempt Co operative Societies from provisions of the Act

6 Cf *section* 46, *Act II of* 1912

Power to exempt societies from conditions as to registration

7 Cf *section* 45, *Act II of* 1912

Indian Companies Act 1913 not to apply VII of 1913

8 Cf *section* 48 *Act II of* 1912

The Registrar

9 The Local Government may appoint a person to be Registrar of Co operative Societies for the whole of Burma or any portion of it and may appoint persons to assist such Registrar

Liability of members of Societies

10 Unless the Local Government by general or special order otherwise directs—

(*a*) a society shall be registered as limited' if any of its members is a society,

(*b*) no society shall be registered as limited if its objects include the creation of funds to be lent to its members and the majority of its members are agriculturists none of the members being a society, and

(*c*) no society shall be registered as limited by shares unless its by laws prescribe that no member, other than a Co operative Society as member, shall hold more than one fifth of the share capital of the society or have any interest in the shares of the society exceeding one thousand rupees

Limited liability to be set forth in name of society

11 When a society is registered as limited the word "limited" or the vernacular equivalent shall be stated as the last word of the name of the society wherever the name appears

Conditions of registration

12 Every application for the registration of a society shall conform to the following requirements —

(*a*) the application shall be accompanied by a copy of the proposed by laws of the society which shall state the objects of the society,

(*b*) where all the applicants are individuals they shall include at least ten persons who there by undertake to become members of the society,

(*c*) every one of the applicants who is an individual shall be above the age of eighteen years,

(*d*) where the objects of the society include the creation of funds to be lent to its members and where all the applicants are individuals all the

applicants shall reside in the same town or village or in the same group of villages provided that the Registrar may consent to registration on the ground that the applicants are of the same tribe class caste or occupation

(e) the application shall be signed by every one of the applicants who is an individual and by a person duly authorised on behalf of every society which is an applicant,

(f) the application shall be presented to the Registrar, and the applicants shall furnish to him all such information about the society as he may require

Power of Registrar to decide certain questions

13 The Registrar shall decide all questions as to whether any application conforms to the requirements of section 12 and whether the objects of the society are in accordance with section 3

Registration and evidence thereof

14. If the Registrar is satisfied that the application and the proposed by laws are in order he shall unless for reasons given to the applicants he sees fit to refuse register the society with such by laws and shall issue to the applicants a certificate of registration which shall be conclusive evidence that all the requirements of this Act and the rules in respect of registration have been complied with

Amendment of the by laws of a society

15 (1) Every amendment of the by laws of a Co operative Society (whether by way of cancellation addition or alteration) shall be forwarded by the society to the Registrar who shall if such amendment is in order register the amendment and issue to the society a copy thereof certified to be duly registered provided that the Registrar may for reasons given to the society refuse to register the amendment

(2) No amendment of any by laws shall be valid until its registration is so certified

Rights and liabilities of members

Member not to exercise rights till due payment made

16 No person shall exercise the rights of a member of a Co operative Society unless or until he has made such payment to the society in respect of membership or acquired such interests in the society as may be prescribed by the rules or by the by laws of such society

Votes of members

17. Each member of a Co operative Society shall have one vote only as a member in the affairs of the society Provided that a Co operative Society which is a member of any other Co operative Society shall have as many votes as may be prescribed by the by laws of such other society and may, subject to such by laws appoint any number of its members not exceeding the number of such votes, to exercise its voting power

Shares or interest not liable to attachment III of 1909 V of 1920

18. Cf *section* 21, *Act II of* 1912

Nomination of transferees

19. If the by laws of a Co operative Society so provide any member of the society may nominate a person by name or designation to whom on such member's death his share or interest shall be transferred and any money due to him from the society shall be paid

Disposal of share or interest of a deceased member

20. When any member of a Co operative Society dies (*a*) the Committee may transfer his share or interest to the nominee, if any nominated in accordance with section 19, or if the existence and residence of such nominee cannot be ascertained by the Committee or for any other reason such transfer cannot be made without unreasonable delay, the Committee may transfer such share or interest to any person who (notwithstanding the absence of probate, letters of administration or succession certificate) appears to the Committee to be entitled to possession of such share or interest as part of the estate of the deceased member, provided always that the transferee shall be a person who is qualified to be the transferee of such share or interest in accordance with section 27, (*b*) if the nominee nominated in accordance with section 19 or the person appearing to be entitled as aforesaid is not qualified in accordance with section 27 to be the transferee of the share or interest of the deceased member, (*i*) in the case of a limited society the Committee shall pay to the nominee, or to the person appearing to be entitled as aforesaid, the value as determined in accordance with the rules of the share or interest of the deceased member, and shall transfer the said share or interest to another person qualified in accordance with section 27 to be the transferee of the said share or interest on receiving from such person the value thereof, (*ii*) in the case of an unlimited society the Committee shall pay to the nominee or the person appearing to be entitled as aforesaid the value

determined in accordance with the rules of the said share or interest.

Disposal of share or interest of a member society if wound up

21. When a member of a limited Co operative Society being itself a Co operative Society is ordered to be wound up under section 45, or section 46, and a liquidator has been appointed under section 47, the value of the share or interest of the society ordered to be wound up shall on the application of the liquidator be paid to him and the share or interest shall be transferred by the Committee to another person or Co operative Society, qualified in accordance with section 27 to be the transferee on receiving from such person or society the value aforesaid

Disposal of moneys due to a deceased member other than share or interest

22. All moneys due from a Co operative Society to a deceased member other than payments in respect of his share or interest in the society shall be paid to the person nominated in accordance with section 19 provided that if no person has been so nominated or if the existence or residence of the nominee cannot be ascertained by the Committee or if for any other reason payment cannot be made to him without unreasonable delay the Committee may pay such moneys to any person appearing to the Committee to be entitled to possession of the money as part of the estate of the deceased member

Disposal of share or interest of expelled resigned or insane members

23. When a member of a Co operative Society is expelled or resigns in accordance with the rules or the by laws of the society or when a member becomes insane —

(*a*) in the case of a limited society the Committee shall transfer his share or interest to another person qualified in accordance with section 27 to be the transferee, on payment to the member who is expelled or resigns or to the guardian of the member who becomes insane of the value, determined in accordance with the rules, of the said share or interest, or

(*b*) in the case of an unlimited society the Committee may either transfer the said member's share or interest to another person qualified under section 27 to be the transferee on payment of the value thereof to the expelled or resigned member or the guardian of the insane member or, if the by laws so provide, may pay to the said member or guardian the value, determined in accordance with the rules of the said share or interest.

Application of Government Savings Banks Act.

V of 1873.

24. Subject to the provisions of sections 20, 21, 22 and 23, if any person to whom any money is due from a Co-operative Society dies or is a minor or becomes insane or otherwise incapable of managing his affairs the provisions of the Government Savings Banks Act, 1873, shall apply *mutatis mutandis* to the payment of such money and the powers conferred by that Act upon the secretary or any officer empowered under section 4 of that Act shall be exercised by the Committee of the society.

Discharge of persons from liability.

25. When any transfer or payment is made in accordance with the provisions of sections 20, 21, 22, 23 or 24 the society and all persons shall be discharged from all liability to make such transfer or payment.

Liability of members.

26. (1) The liability of the members of every Co-operative Society for payment of the debts of the society on its dissolution shall be joint and several but subject, in the case of a limited society, to such limitation of amount as shall be provided by the by-laws.

(2) Subject to any limitation of liability existing at the date of dissolution, persons who have ceased to be members of a Co-operative Society shall, for a period of two years retain their liability as members: Provided that a past member shall not be liable to contribute in respect of any debts of the society which can be satisfied by contributions from present members, or in respect of any debt contracted after he ceased to be a member.

(3) The estate of a deceased member shall be liable in like manner, and subject to the same restrictions, for a period of one year from the time of his decease.

Restrictions on transfer of share or interest.

27. No transfer or mortgage by a member of his share or interest in a Co-operative Society shall be valid unless—

(*a*) he has held such share or interest for not less than one year; and

(*b*) transferee or mortgagee is a member of such society or a person whose application for membership has been accepted, or is another society; and

(*c*) the transferee or mortgagee is not prohibited from holding such share or interest by the provisions of this Act or the rules or the by-laws of the society relating to the maximum amount of a member's holding.

Duties of societies

Address of Co operative Societies

28. Every Co operative Society shall have an address, registered in accordance with the rules to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof within thirty days of such change

Copy of Act rules etc to be open to inspection

29. Every Co operative Society shall keep open to inspection free of charge at all reasonable times at the registered address of the society—

(*a*) a copy of this Act,

(*b*) a copy of the rules governing such society,

(*c*) a copy of the by laws of such society, and

(*d*) a register of its members

Audit

30. (1) Every Co operative Society shall cause its accounts to be audited once at least in every year by a person authorised in this behalf by the Registrar, by special or general order

(2) Every audit shall include an examination of over due debts, a verification of the existence of cash balances and securities, and a valuation of the assets and liabilities of the society

(3) The auditor shall have a right of access to all books, papers, and things in the possession or power of the society for the purposes of such audit and may call upon any officer, agent, servant or member of the society to furnish such information and to render such assistance as may be reasonably required for the purpose of such audit

(4) If any person fails to furnish information or render assistance as required by sub section (3) he shall, on conviction by a Magistrate of the first class, be liable to a fine of rupees two hundred in respect of such default

Privileges of Co operative Societies

Co-operative Societies to be bodies corporate

31. Cf *section* 18, *Act II of* 1912

Charge and set-off in respect of shares or interest of member

32. Cf *section* 20, *Act II of* 1912

Admissibility of copy of document or entry as evidence

33. (1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a Co operative Society shall, if certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the document or entry

(2) In the case of such Co operative Societies as the Local Government by general or special order may direct, no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause

Exemption from compulsory registration of instruments relating to shares and debentures of Co operative Society XV of 1908

34. Cf *section* 27, *Act II of* 1912

Power to exempt from stamp duty and registration-fees

35. Cf *section* 28 (2), *Act II of* 1912

Property and funds of Co operative Societies

Restrictions on loans

36. Cf *section* 29 (1) *and* (3)

Restrictions on borrowing

37. A Co operative Society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by laws, and shall in respect of such deposits or loans make such provision for the maintenance of fluid resource as the Registrar may, by general or special order in this behalf, prescribe

Restrictions on other transactions with non-members

38. Cf *section* 31, *Act II of* 1912

Investment of funds

II of 1882

39 Cf *section* 32, *Act II of* 1912

Funds not to be divided by way of profit

40 No part of the funds of a Co operative Society shall be divided by way of bonus or dividend or otherwise among its members

Provided that after at least one fourth of the net profits in any year have been carried to a reserve fund payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by laws

Provided also that in the case of a Co operative Society which is not limited no distribution of profits shall be made without the general or special order of the Local Government in this behalf

Contribution to charitable purpose 1 of 1890

41 Cf *section* 34 *Act II of* 1912

Inspection of affairs

Inquiry by Registrar

42 (1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution working and financial condition of a Co operative Society

(2) The Registrar shall hold such an enquiry as is contemplated in sub section (1)—

(*a*) on the application of a majority of the Committee of the society

(*b*) on the application of not less than one third of the members of the society

(3) All officers and members of the society whose affairs are investigated shall furnish such information in their possession in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated

Inspection of books of indebted society

43 Cf *section* 36 *Act II of* 1912

Costs of inquiry

44 Where an inquiry is held under section 42 or an inspection is made under section 43 the Registrar may

apportion the costs or such part of the costs as he may think right between the society the members or creditors demanding the inquiry or inspection the officers or former officers and members or past members of the society

Liquidation and dissolution

Winding up

45 (1) If the Registrar after an inquiry has been held under section 42 or after an inspection has been made under section 13 or on receipt of an application made by three fourths of the members of a Co operative Society is of opinion that the society ought to be dissolved he may order the society to be wound up

(2) Any member of a Co operative Society may within two months from the date of an order made under sub section (1) appeal from such order

(3) Where no appeal is presented within two months from the making of an order for the winding up of a Co operative Society the order shall take effect of the expiry of that period

(4) Where an appeal is presented within two months the order shall not take effect until it is confirmed by the appellate authority

(5) The authority to which appeals under this section shall lie shall be the Local Government provided that the Local Government may by notification direct that appeals shall lie to such other authority as may be specified in the notification

Winding up where members are less than ten

46 In the case of a Co operative Society of which all the members are individuals the Registrar may order the society to be wound up if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten

Liquidation

47 (1) Where the Registrar has passed an order under section 45 or section 46 for the winding up of a Co operative Society he may forthwith appoint a competent person to be liquidator and such person notwithstanding anything in section 45 relating to the time when the order for winding up shall take effect shall have power to take immediate possession of all assets belonging to the society and of all books records and other documents pertaining to the business thereof and to carry on the business of the society so far as may be necessary for the beneficial winding up of the same

(2) A liquidator appointed under sub section (1) shall, as soon as the order of winding up takes effect, have power—

(*a*) to institute and defend suits and other legal proceedings on behalf of the society by his name or office,

(*b*) from time to time to determine the debts payable and the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officer, to the assets of the society In the case of a society which is not limited such contributions shall be determined at the discretion of the liquidator both as to the persons who shall be called upon to pay and the amounts which they shall pay, but without prejudice to any right of contribution amongst themselves,

(*c*) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants,

(*d*) to determine by what persons and in what proportions the costs of the liquidation are to be borne,

(*e*) in the case of a society which is a member of a Co operative Society established with the object of guaranteeing sums borrowed by Co operative Societies which are its members, to determine, in accordance with the by laws of such guaranteeing society, at any stage of the proceedings, the amounts which the other members of such guaranteeing society shall severally contribute towards the discharge of the debts guaranteed by it

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 V of 1908

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules it shall lie to the Court of the District Judge

(5) Orders made under this section shall save as provided for by section 51 on application be enforced as follows —

(*a*) when made by a liquidator by any Civil Court having local jurisdiction in the same manner as a decree of such Court

(*b*) when made by the Court of the District Judge on appeal in the same manner as a decree of such Court made in any suit pending therein

Dissolution

48 (1) The Registrar may cancel an order for the winding up of a Co operative Society in any case where in his opinion the society should continue to exist

(2) In any other case the Registrar shall after considering the final report of the liquidator if any has been appointed order the registration of the society to be cancelled and thereupon the society shall cease to exist as a corporate body

Jurisdiction of Civil Courts

49 Save in so far as is hereinbefore expressly provided no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution or winding up of a Co operative Society under this Act

Rules

Rules

50 (1) The Local Government may for the whole or any part of Burma and for any Co operative Society or class of Co operative Societies make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) to (*e*) as in (*a*) to (*e*) of Act II of 1912

(*f*) provide for general and special meetings of the members and for the procedure at such meetings and the resolutions to be passed at and the powers to be exercised by such meetings

(*g*) as in (*g*) of Act II of 1912

(*h*) prescribe the accounts and books to be kept by a Co operative Society and provide for the audit of such accounts and the charges if any to be made for such audit and for the periodical publication of a balance sheet showing the assets and liabilities of a society

(*i*) prescribe the returns to be submitted by a Co operative Society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted,

(*j*) provide for the persons by whom and the form in which copies of entries in books of Co operative Societies may be certified, and for the charges to be levied for such copies,

(*k*) as in (*k*) of Act II of 1912,

(*l*) provide that any dispute touching the business of a Co operative Society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the Committee or any officer shall be referred to the Registrar for decision or, if he so directs to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and the enforcement of the decisions of the Registrar or the awards of arbitrators,

(*m*) provide for the mode in which the value of the share or interest shall be ascertained for the purposes of sections 20, 21 and 23 and for the nomination of transferees under section 19,

(*n*) to (*q*) as in (*o*) to (*r*) of Act II of 1912,

(*r*) subject to the provisions of section 45, determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals,

(*s*) prescribe the procedure to be followed by a liquidator appointed under section 47, and the cases in which an appeal shall lie from the order of such liquidator, and

(*t*) prescribe the remuneration which shall be payable to headmen or others employed to collect sums recoverable under section 51 in the same manner as arrears of land revenue

(3) The Local Government may delegate, subject to such conditions if any, as it thinks fit, all or any of its powers to

make rules under this section to any authority specified in the order of delegation

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication

(5) All rules made under this section shall be published in the Gazette

Miscellaneous

Recovery of sums due to Government

51. (1) All sums due from a Co operative Society or from an officer or member or past member of a society as such to the Government and all sums awarded as costs under section 14 or payable by order of a liquidator under section 47 shall be recovered in the same manner as arrears of land revenue on a requisition being made by the Registrar, to the Collector

(2) Sums due from a Co operative Society and recoverable under sub section (1) may be recovered firstly from the property of the society and secondly in the case of a society of which the liability of the members is limited from the members subject to the limit of their liability and in the case of other societies from the members

Repeal

52. The enactments specified in the Schedule are hereby repealed in so far as they apply to Burma to the extent specified in the fourth column of the said Schedule

SCHEDULE

Enactments repealed

(See section 52)

Year	No	Short title	Extent of repeal
1912	II	The Co operative Societies Act 1912	The whole
1920	XXVIII	The Devolution Act 1920	So much as relates to Act II of 1912

APPENDIX III.

ADRAS ACT No VI OF 1932.

PASSED BY THE LEGISLATIVE COUNCIL OF MADRAS

(*Received the assent of the Governor on the 9th May* 1932 *and that of the Governor General on the 16th June* 1932 *the assent of the Governor General was first published in the Fort St George Gazette on the 5th July* 1932)

An Act to consolidate and amend the law relating to Co operative Societies in the Presidency of Madras

WHEREAS it is expedient further to facilitate the formation and working of Co operative Societies for the promotion of thrift self help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living better business and better methods of production and for that purpose to consolidate and amend the law relating to Co operative Societies in the Presidency of Madras

And whereas the previous sanction of the Governor General has been obtained to the passing of this Act it is hereby enacted as follows —

Preliminary

1 (1) This Act may be called the Madras Co operative Societies Act 1932 — Short title and extent

(2) It extends to the whole of the Presidency of Madras

2 In this Act unless there is anything repugnant in the subject or context— — Definitions

(*a*) by laws *as in Act II of* 1912 — By laws

(*b*) Committee *as in Act II of* 1912 — Committee

"Financing bank"

(*c*) "Financing bank" means a registered society the main object of which is to lend money to other registered societies,

"Member"

(*d*) "Member" *as in Act II of* 1912,

"Officer"

(*e*) "Officer" includes a president, vice president, chairman, vice chairman, secretary, assistant secretary, treasurer, member of committee, and any other person empowered under the rules or the by-laws to give directions in regard to the business of the society,

"Registered society"

(*f*) "Registered society" *as in Act II of* 1912,

"Registrar"

(*g*) "Registrar" *as in Act II of* 1912

"Rules"

(*h*) "Rules" *as in Act II of* 1912

Registration

The Registrar

3. The Local Government may appoint a person to be Registrar of Co operative Societies for the Presidency of Madras or any portion of it and may appoint persons to assist such Registrar and may, by general or special order confer on any such persons all or any of the powers of a Registrar under this Act

Societies which may be registered

4. Subject to the provisions of this Act a society which has as its object the promotion of the economic interests of its members in accordance with co operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability

Provided that unless the Local Government by general or special order otherwise directs—

(*i*) the liability of a society of which a member is a registered society shall be limited, and

(*ii*) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of all its obligations

Change of liability

5. (1) Subject to the proviso to section 4 and to any rules made in this behalf a registered society may, with the previous sanction of the Registrar, change its liability from limited to unlimited or from unlimited to limited

Provided that—

(*i*) the society shall give notice in writing of its intention to change its liability to all its members and creditors,

(*ii*) any member or creditor shall, notwithstanding any by law or contract to the contrary, have the option of withdrawing his shares deposits or loans as the case may be, within three months of the service of such notice on him and the change shall not take effect until all such claims have been satisfied, and

(*iii*) any member or creditor, who does not exercise his option within the period aforesaid, shall be deemed to have assented to the change

(2) Notwithstanding anything contained in the proviso to sub section (1) the change shall take effect at once if all the members and creditors assent thereto

Restrictions on interest of member of society with limited liability and a share capital

6. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(*a*) hold more than such portion of the share capital of the society subject to a maximum of one-fifth as may be prescribed by the rules, or

(*b*) have or claim any interest in the shares of the society, exceeding one thousand rupees

Conditions of registration

7. (1) No society other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons who have attained the age of majority and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(*a*) reside in the same town or village or in the same group of villages, or

(*b*) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act

Power of Registrar to decide certain questions

8. *As in Act II of* 1912

Application for registration

9. *As in Act II of* 1912

Registration

10. If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by laws are not contrary to this Act or to the rules, he may register the society and its by-laws In case of refusal, an appeal shall lie to the Local Government within two months from the date of the issue of the order of refusal by registered post

Evidence of registration

11. *As in Act II of* 1912

Amendment of the by-laws of registered society

12. (1) No amendment of the by laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar

(2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may register the amendment In case of refusal, an appeal shall lie to the Local Government within two months from the date of the issue of the order of refusal by registered post

(3) When the Registrar registers an amendment of the by laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered

Division and amalgamation of societies

13. (*a*) (1) Any registered society may, at a meeting of its general body specially called for the purpose of which at least seven clear days' notice shall be given to its members, resolve to divide itself into two or more societies The resolution (hereinafter in this sub section referred to as the preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies into which it is proposed to divide it and may prescribe the area of operations of, and specify the members who will constitute, each of the new societies

(2) (*i*) A copy of the preliminary resolution shall be sent to all the members and creditors of the society

(*ii*) Any member of the society may, notwithstanding any by-law to the contrary, by notice given to the society within a period of three months from his receipt of the preliminary resolution, intimate his intention not to become a member of any of the new societies

(*iii*) Any creditor of the society may, notwithstanding any agreement to the contrary by notice given to the society within the said period, intimate his intention to demand a return of the amount due to him

(3) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the society, a meeting of the general body of the society, of which at least fifteen clear days' notice shall be given to its members, shall be convened for considering the preliminary resolution If, at such meeting, the preliminary resolution is confirmed by a resolution passed by a majority of not less than two thirds of the members present, either without changes or with such changes as, in the opinion of the Registrar, are not material, he may, subject to the provisions of clause (5) and section 10, register the new societies and the by-laws thereof On such registration, the registration of the old society shall be deemed to have been cancelled

The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom

(4) At the meeting referred to in clause (3) provision shall be made by another resolution for—

(*i*) the repayment of the share capital of all the members who have given notice under sub-clause (*ii*) of clause (2), and

(*ii*) the satisfaction of the claims of all the creditors who have given notice under sub-clause (*iii*) of clause (2)

Provided that no member or creditor shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in clause (3)

(5) If, within such time as the Registrar considers reasonable, the share capital of the members referred to in clause (4) is not repaid or the claims of the creditors referred to in that clause, are not satisfied, the Registrar may refuse to register the new societies

(6) The registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under clause (3)

(*b*) (1) Two or more registered societies may, at meetings of their respective general bodies specially called for the purpose of which at least seven clear days' notice shall be given to their respective members, resolve to amalgamate into one society This resolution is hereinafter in this sub section referred to as the preliminary resolution

(2) (*i*) A copy of the preliminary resolution of each society shall be sent to all the members and creditors thereof

(*ii*) Any member of any such society may, notwithstanding any by law to the contrary, by notice given to the society of which he is a member within a period of three months from his receipt of the preliminary resolution, intimate his intention not to become a member of the new society

(*iii*) Any creditor of any such society may, notwithstanding any agreement to the contrary, by notice given to the society of which he is a creditor within the said period, intimate his intention to demand a return of the amount due to him

(3) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of all the societies, a joint meeting of the members of such societies of which at least fifteen clear days' notice shall be given to them, shall be convened for considering the preliminary resolution If, at such meeting, the preliminary resolution is confirmed by a resolution passed by a majority of not less than two thirds of the members present either without changes or with such changes as, in the opinion of the Registrar, are not material, he may, subject to the provisions of clause (5) and section 10, register the new society and the by-laws thereof On such registration, the registration of the old societies shall be deemed to have been cancelled

The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom

(4) At the joint meeting referred to in clause (3) provision shall be made by another resolution for—

(*i*) the repayment of the share capital of all the members who have given notice under sub clause (*ii*) of clause (2) and

(*ii*) the satisfaction of the claims of all the creditors who have given notice under sub clause (*iii*) of clause (2)

Provided that no member or creditor shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in clause (3)

(5) If, within such time as the Registrar considers reasonable the share capital of the members referred to in clause (4) is not repaid or the claims of the creditors referred to in that clause are not satisfied the Registrar may refuse to register the new society

(6) The registration of the new society shall be a sufficient conveyance to vest in it all the assets and liabilities of the original societies

Rights and liabilities of members

Member not to exercise rights till due payment made

14. (1) No member of a registered society shall save as otherwise provided in sub section (2) exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules and by-laws

(2) In the case of a society registered after the commencement of this Act the persons who have signed the application to register the society may elect a Committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider desirable

Provided that the Committee shall cease to function as soon as the members of the society have elected a Committee in accordance with its by laws

General meetings

15. (1) The Committee may at any time call a general meeting of the society and shall call such a meeting within one month after receipt of a requisition in writing from the Registrar or from a financing bank to which the society is indebted or from such number of members or proportion of the total number of members as may be specified in the by laws of the society

(2) If a general meeting is not called in accordance with such requisition the Registrar shall have power to call a general meeting of the society himself

Votes of members

16 (1) No member of any registered society shall have more than one vote in the affairs of the society provided that in the case of an equality of votes the Chairman shall have a casting vote

(2) A registered society which has invested any part of its funds in the shares of another registered society may appoint any of its members not disqualified for such appointment under any rules prescribed in that behalf to vote in the affairs of such other registered society

Restrictions on transfer of share or interest

17 (1) The transfer of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules

(2) In the case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(*a*) he has held such share or interest for not less than one year and

(*b*) the transfer is made to the society or to a member of the society

Duties of registered societies

Address of societies

18 *As in Act II of* 1912

Copy of Act rules and by laws to be open to inspection

19 *As in Act II of* 1912

Privileges of registered societies

Societies to be bodies corporate

20. *As in Act II of* 1912

Prior claim of society

21 (1) Subject to the prior claim if any of the Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent a registered society shall be

entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past or deceased member—

(*a*) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan,

(*b*) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased

(2) The priority created by sub-section (1) in favour of a registered society shall be available against any claim of the Government arising from a loan granted under the Land Improvements Loans Act, 1883, after the grant of the loan by the society XIX of 1883

Charge and set-off in respect of shares or interest of member

22. A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past or deceased member and upon any dividend, bonus or profits payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or the estate of such deceased member to the society, and may set-off any sum credited or payable to a member or past or deceased member or the estate of a deceased member in or towards payment of any such debt

Shares or interest not liable to attachment

23. Subject to the provisions of section 22, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency Towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest III of 1909 V of 1920

Transfer of interest on death of member

24. (1) Subject to the provisions of section 22, a registered society may on the death of a member transfer his share or interest in the capital to the person nominated

in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws

Provided that—

(*i*) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid, and

(*ii*) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir, legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified

(2) Subject as aforesaid, a registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative as the case may be

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person

Liability of past member or of the estate of a deceased member

25. The liability of a past member or of the estate of a deceased member for the debts of a registered society as they existed on the date of his ceasing to be a member or of his decease, as the case may be, shall continue for a period of two years from such date

Register of members

26. *As in Act II of* 1912

Proof of entries in societies' books

27. (1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed by the rules, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible

(2) No officer or liquidator of a registered society and no officer in whose office the books of a registered society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or the arbitrator made for special cause.

Power to attach and sell defaulter's property.

28. Whenever a decree or order of a civil court, a decision or an award of the Registrar or arbitrator or an order of the Registrar or liquidator is obtained by a registered society for the realisation of money, the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, subject to such rules as may be prescribed by the Local Government, recover the amount due under such decree, award or order together with the interest, if any, due thereon, and the costs of process by the attachment and sale of the property of the person against whom such decree, decision, award or order is obtained.

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

29. *As in Act II of* 1912.

Power to exempt from income-tax, stamp duty and registration fees.

30. (1) The Governor-General in Council by notification in the *Gazette of India* may, in the case of any registered society or class of registered societies, remit the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits.

(2) The Local Government, by notification in the *Fort St. George Gazette*, may in the case of any registered society or class of registered societies remit—

(*a*) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments or decisions, awards or orders of the Registrar

or arbitrators under this Act are respectively chargeable, and

(*b*) any fee payable under the law of registration for the time being in force

Government aid to registered societies

31. Notwithstanding anything contained in any other enactment, the Local Government may, subject to such rules as may be prescribed in this behalf, grant loans to, take shares in, or give financial assistance in any other form to any registered society

Property and funds of registered societies

Restrictions on loans

32. (1) A registered society shall not make a loan to any person other than a member

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society

(2) Save with the sanction of the Registrar, a registered society shall not lend money on the security of moveable property other than agricultural produce

(3) Notwithstanding anything contained in sub-sections (1) and (2), a registered society may make a loan to a depositor on the security of his deposit

(4) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies

Restrictions on borrowings

33. A registered society shall receive deposits and loans only to such extent and under such conditions as may be prescribed by the rules or the by-laws of the society

Investment of funds

34. (1) Subject to the provisions of sub-section (4) of section 32, a registered society may invest or deposit its funds—

(*a*) in the Government Savings Bank, or

(*b*) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or

(*c*) in the shares or securities of any other registered society provided that no such investment shall be made in the shares of any society with unlimited liability, or

(*d*) with any bank or person carrying on the business of banking approved for this purpose by the Registrar or

(*e*) in any other mode permitted by the rules

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed

Funds not to be divided among members

35 No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members

Provided that payment may be made to a member for work done by him as Secretary or as clerk on such scale as may be prescribed by the by laws

Provided also that after at least one fourth of the net profits in any year have been carried to a reserve fund payments from the remainder or such profits and from any profits of past years available for distribution may be made—

(*i*) as a bonus to a member for any specific service rendered by him to the society including work done as Secretary or as clerk and

(*ii*) among the members to such extent and under such conditions as may be prescribed by the rules or by laws

Contribution to charitable purpose

36 Any registered society may after one fourth of the net profits in any year has been carried to a reserve fund contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purpose as defined in section 2 of the Charitable Endowments Act 1890

Audit

37 (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year

(2) The audit under sub section (1) shall include an examination of overdue debts if any the verification of the cash balance and securities and a valuation of the assets and liabilities of the society

(3) The Registrar or the person authorised by him under sub section (1) shall at all reasonable times have free access to the books accounts documents securities cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books accounts,

documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof

(4) Every officer or member of the society shall furnish such information in regard to the transactions and working of the society as the Registrar or the person authorised by him under sub section (1) may require

Inquiry and inspection

Inquiry by Registrar

38. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the Committee or of not less than one third of the members, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely —

(*a*) He shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof

(*b*) He may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath

(*c*) (*i*) He may, notwithstanding any rule or by-law prescribing the period of notice for a general meeting of the society, require the officers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him If the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself.

(ii) Any meeting called under clause (i) shall have all the powers of a general meeting called under the by-laws of the society and its proceedings shall be regulated by such by-laws

(3) When an inquiry is made under this section, the Registrar shall communicate the result of the inquiry to the financing bank, if any, to which the society is indebted

Inspection of books by Registrar

39. (1) The Registrar may, on the application of a creditor of a registered society, inspect or direct some person authorised by him in this behalf by a general or special order in writing to inspect the books of the society and the Registrar or the person so authorised shall have all the powers of the Registrar when holding an inquiry under section 38

(2) No inspection shall be made or directed under sub-section (1) unless the creditor—

(a) satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require

(3) Where an inspection is made under sub-section (1), the Registrar shall communicate the results of such inspection to the creditor and to the financing bank, if any, to which the society is indebted

Inspection of books by financing bank

40. A financing bank shall have the right to inspect the books of any registered society which is indebted to it The inspection may be made either by an officer of the financing bank or by a member of its paid staff certified by the Registrar as competent to undertake such inspection The officer or member so inspecting shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may also call for such information, statements and returns as may be necessary to ascertain the financial condition of the society and the safety of the sums lent to it by the financing bank

Costs of inquiry and inspection

41. Where an inquiry is held under section 38 or an inspection is made under section 39, the Registrar may after giving the parties an opportunity to be heard,

apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, the officers or former officers of the society Costs may also be awarded by the Registrar to the financing bank in the case of inspection under section 40, by the financing bank

Recovery of costs

42. Any sum awarded by way of costs under section 41 may be recovered as if it were an arrear of land revenue

Supersession of Committee of society

Super-session of Committee

43. (1) If, in the opinion of the Registrar, the Committee of any registered society is not functioning properly, he may, after giving an opportunity to the Committee to state its objections, if any, by order in writing, dissolve the Committee and appoint a suitable person or persons to manage the affairs of the society for a specified period not exceeding two years The period specified in such order may, at the discretion of the Registrar, be extended from time to time provided that such order shall not remain in force for more than four years in the aggregate

(2) The person or persons so appointed shall have power, subject to the control of the Registrar, to recover the assets and discharge the liabilities of the society and take such other action as may be required in its interests

(3) The Registrar may fix the remuneration payable to the person or persons so appointed The amount of such remuneration and the other costs, if any, incurred in the management of the society, shall be payable from its funds

(4) The person or persons so appointed shall, at the expiry of the period of his or their appointment, arrange for the constitution of a new Committee in accordance with the by-laws of the society

(5) Before taking any action under sub section (1) in respect of any society, the Registrar shall—

(*i*) if the society is indebted to a financing bank, consult such bank regarding such action and the provision to be made for the management of the affairs of the society, and

(*ii*) if the society is a financing bank, obtain the previous concurrence of the Madras Provincial Co-operative Bank to the taking of such action

(6) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 44

Dissolution of society

Dissolution

44. (1) If the Registrar, after an inquiry has been held under section 38 or after an inspection has been made under section 39 or section 40 or on receipt of an application made by three fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may by order in writing cancel the registration of the society A copy of the order shall forthwith be communicated to the society by registered post

(2) Any member of the society may, within two months from the date of the order made under sub section (1), appeal to the Local Government from such order

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of the society, the order shall take effect on the expiry of that period

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the Local Government and such confirmation is communicated to the society by registered post

Cancellation of registration of society

45. Where it is a condition of the registration of a society that it should consist of at least ten members who have attained the age of majority the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten such members

Effect of cancellation of registration

46. *As in Act II of* 1912, *section* 41

Winding up

47. (1) Where the registration of a society is cancelled under section 44 or section 45, the Registrar may appoint any person to be liquidator of the society

(2) Subject to any rules that may be made under this Act, the whole of the assets of the society shall, on the appointment of a liquidator under sub section (1), vest in such liquidator and he shall have power to realise such assets by sale or otherwise

(3) Such liquidator shall also have power, subject to the control of the Registrar—

(*a*) to institute and defend suits and other legal proceedings on behalf of the society by his name of office,

(*b*) to determine from time to time the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society, such contribution including debts due from such members or persons,

(*c*) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising between claimants,

(*d*) to pay claims against the society (including interest up to the date of cancellation of registration) according to their respective priorities, if any, in full or rateably, as the assets of the society permit, the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such cancellation at a rate fixed by him but not exceeding the contract rate in any case,

(*e*) to determine by what persons and in what proportions the costs of the liquidation are to be borne,

(*f*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society, and

(*g*) to carry on the business of the society so far as may be necessary for the beneficial winding-up of the same

(4) Subject to any rules that may be made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and (so far as may be) in the same manner as is

provided in the case of a civil court under the Code of Civil Procedure, 1908 V of 1908

(5) Any sum ordered under this section to be recovered as a contribution to the assets of the society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar, in the same manner as arrears of land revenue

(6) Save as provided in sub-section (5), orders made under this section shall, on application, be enforced by any civil court having local jurisdiction in the same manner as a decree of such court

(7) When the affairs of the society have been wound up, the liquidator shall deposit the records of the society in such place as the Registrar may direct

(8) Any person aggrieved by any order of the liquidator may appeal to the Registrar against such order within two months from the date of the issue of the order by registered post

Bar of suit in certain cases

48. Save in so far as is expressly provided in this Act, no civil court shall take cognisance of any matter connected with the winding up or dissolution of a society under this Act, and when a liquidator has been appointed no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose

Surcharge and attachment

Surcharge

49. (1) Where in the course of an audit under section 37 or an inquiry under section 38 or an inspection under section 39 or the winding-up of a society, it appears that any person who has taken part in the organisation or management of the society or any past or present officer of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society, the Registrar may, of his own motion or on the application of the Committee or liquidator or of any creditor or contributory, examine into the conduct of such person or officer and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retainer or breach of trust as the Registrar thinks just

(2) The order of the Registrar under sub-section (1) shall be final unless it is set aside by the District Court having jurisdiction over the area in which the headquarters of the society are situated or if the headquarters of the society are situated in the City of Madras, by the City Civil Court, on application made by the party aggrieved within three months of the date of receipt of the order by him.

(3) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf to the Collector by the Registrar in the same manner as arrears of land revenue.

(4) This section shall apply notwithstanding that such person or officer may have incurred criminal liability by his act.

Attachment of property.

50. Where the Registrar is satisfied on the application of the liquidator or otherwise that any person with intent to defeat or delay the execution of any order that may be passed against him under clause (*b*) of sub-section (3) of section 47 or section 49—

(*a*) is about to dispose of the whole or any part of his property, or

(*b*) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar,

the Registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary and such attachment shall have the same effect as if it had been made by a competent civil court.

Arbitration.

Disputes.

51. (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its Committee against a paid servant of the society) arises :—

(*a*) among members, past members and persons claiming through members, past members and deceased members, or

(*b*) between a member, past member or person claiming through a member, past member or

deceased member and the society its Committee or any officer agent or servant of the society or

(*c*) between the society or its Committee and any officer agent or servant of the society or

(*d*) between the society and any other registered society

such dispute shall be referred to the Registrar for decision

Explanation —A claim by a registered society for any debt or demand due to it from a member past member or the nominee heir or legal representative of a deceased member whether such debt or demand be admitted or not is a dispute touching the business of the society within the meaning of this sub section

(2) The Registrar may on receipt of such reference—

(*a*) decide the dispute himself or

(*b*) transfer it for disposal to any person who has been invested by the Local Government with powers in that behalf or

(*c*) subject to such rules as may be prescribed refer it for disposal to an arbitrator or arbitrators

(3) Subject to such rules as may be prescribed the Registrar may withdraw any reference transferred under clause (*b*) of sub section (2) or referred under clause (*c*) of that sub section and deal with it in the manner provided in the said sub section

(4) Where the Registrar is satisfied that a party to any reference made to him under sub section (1) with intent to defeat or delay the execution of any decision that may be passed thereon—

(*a*) is about to dispose of the whole or any part of his property or

(*b*) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar

the Registrar may unless adequate security is furnished direct the conditional attachment of the said property or such part thereof as he thinks necessary and such attachment shall have the same effect as if it had been made by a competent civil court

(5) The Registrar may of his own motion or on the application of a party to a reference revise any decision

thereon by the person to whom such reference was transferred or by the arbitrator or arbitrators to whom it was referred.

(6) (*a*) Any decision passed by the Registrar under clause (*a*) of sub-section (2) or under sub-section (5) shall be final and shall not be called in question in any civil or revenue court.

(*b*) Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred shall, save as otherwise provided in sub-section (5), be final and shall not be called in question in any civil or revenue court.

Offences and penalties.

Offences.

52. It shall be an offence under this Act if—

(*a*) a registered society or an officer or member thereof, wilfully makes a false return or furnishes false information; or

(*b*) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorised in this behalf under the provisions of this Act.

Punishment for disposing of property in contravention of section 21.

53. Any member or past member or the nominee, heir or legal representative of a deceased member contravening the provisions of section 21 by fraudulently disposing of any property in respect of which the society is entitled to claim priority under that section or doing any other act to the prejudice of such claim, shall be punishable with fine not exceeding two hundred rupees.

Prohibition of the use of the word 'co-operative'.

54. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" is part without the sanction of the Local Government:

Provided that nothing in the section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which the Co-operative Societies Act, 1912, came into operation.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend

to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

Punishment for offences not otherwise provided for.

55. Any registered society or any officer or member thereof or any other person guilty of an offence under this Act for which no punishment is expressly provided herein shall be punishable with fine not exceeding fifty rupees.

Cognisance of offences.

56. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

(2) Every offence under this Act shall, for the purposes of the Code of Criminal Procedure, 1898, be deemed to be non-cognisable.

(3) No prosecution shall be instituted under this Act without the previous sanction of the Registrar. Such sanction shall not be given without giving the party concerned an opportunity to be heard.

Miscellaneous.

Power of Government and Registrar to call for proceedings and to pass orders thereon.

57. The Local Government or the Registrar may call for and examine the record of any enquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to the Local Government or the Registrar that any decision or order or proceedings so-called for should be modified, annulled, or reversed, the Local Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

Recovery of sums due to Government.

58. (1) All sums due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceeding under this Act may be recovered in the same manner as arrears of land revenue.

(2) Sums due from a registered society to the Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society the liability of the members of which is limited, from the members, past members or the estates of deceased members, subject to the limit of their liability;

and, thirdly, in the case of other societies from the members, past members or the estates of deceased members :

Provided that the liability of past members and of the estates of deceased members shall in all cases be subject to the provisions of section 25.

Power to exempt societies from conditions as to registration.

59. *As in section* 45, *Act II of* 1912.

Power to exempt registered societies from provisions of the Act.

60. *As in section* 46, *Act II of* 1912.

Indian Companies Act, 1913, not to apply.

61. The provisions of the Indian Companies Act, 1913, shall not apply to registered societies.

Saving of existing societies.

62. (1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, or under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the said Acts shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

Acts of societies, etc., not to be invalidated by certain defects.

63. No act of a registered society or any Committee or of any officer of the society, shall be deemed to be invalid by reason only of some defect in the organisation of the society or in the formation of the general body or in the appointment or election of the officer or on the ground that he was disqualified for his office.

Construction of references to Co-operative Societies Act, 1912, in enactments.

64. All references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in British India and for the time being in force in the Presidency of Madras shall, in its application to the said Presidency, be construed as references to this Act.

65. (1) The Local Government may, for the whole or any part of the Presidency of Madras, and for any registered society or class of such societies, make rules to carry out all or any of the purposes of this Act. Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) and (*b*) as in Act II of 1912;

(*c*) subject to the provisions of section 5 prescribe the procedure to be followed when societies change their form of liability;

(*d*) to (*g*) as in (*c*) to (*f*) of Act II of 1912;

(*h*) prescribe in the case of a financing bank—

(*i*) the proportion of individual members to society members in the constitution of its general body or of its Committee; and

(*ii*) the maximum number of members of its Committee.

(*i*) as in (*g*) of Act II of 1912;

(*j*) prohibit a society from appointing a defaulting member of any society to its Committee or to the Committee of any other society and allowing him to exercise his rights of membership in the society or to represent it in another society and vote;

(*k*) as in (*h*) of Act II of 1912;

(*l*) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted and in case of failure to submit any such return for the levy of the expenses of preparing it;

(*m*) provide for the persons by whom and the form in which copies of entries in books of societies may be certified and for the charges to be levied for the supply of such copies;

(*n*) as in (*k*) of Act II of 1912;

(*o*) provide for—

(*i*) the appointment of an arbitrator or arbitrators to decide disputes;

(*ii*) the procedure to be followed in proceedings before the Registrar, arbitrator or arbitrators or other person deciding disputes including the appointment of a guardian for a party to the dispute

who is a minor or who, by reason of unsoundness of mind or mental infirmity is incapable of protecting his interests,

(*iii*) the levy of the expenses incidental to such proceedings, and

(*iv*) the enforcement of the decisions or awards in such proceedings,

(*p*) provide for the withdrawal and expulsion of members and for the payments if any, to be made to members who withdraw or are expelled and for the liabilities of past members or the estates of deceased members,

(*q*) prescribe the prohibitions and restrictions subject to which societies may trade with persons who are not members,

(*r*) to (*v*) as in (*n*) to (*r*) of Act II of 1912,

(*w*) prescribe the procedure to be followed by a liquidator appointed under section 47, and provide for the disposal of the surplus assets, if any, of the society,

(*x*) subject to the provisions of this Act determine the cases in which an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of all appeals under this Act,

(*y*) prescribe the period for which and the terms under which aid may be given by the Local Government to societies and the terms under which the Local Government may guarantee the payment of interest on debentures issued by societies,

(*z*) provide for the custody of property attached under this Act,

(*aa*) provide for the issue and service of processes and for proof of service thereof,

(*bb*) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same,

(*cc*) provide for the investigation of claims and objections that may be preferred against any attachment effected by the Registrar or an officer empowered by him,

(*dd*) provide for the recovery of costs awarded against the Government in cases under section 49,

(*ee*) prescribe the procedure for the attachment and sale of property under section 28, and

(*ff*) provide for all matters expressly required or allowed by this Act to be prescribed by rules

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication

(4) All rules made under this section shall be published in the *Fort St George Gazette* and on such publication shall have effect as if enacted in this Act

(5) All such rules shall be laid on the table of the Legislative Council

Repeals

66. The enactments specified in the schedule are hereby repealed in so far as they apply to the Presidency of Madras to the extent specified in the fourth column of the said schedule Repeals

SCHEDULE

Enactments repealed

Year	No	Short title	Extent of repeal
(1)	(2)	(3)	(4)
		Acts of the Governor General in Council	
1912	II	The Co operative Societies Act 1912	The whole
1920	XXXVIII	The Devolution Act, 1920	So much as relates to Act II of 1912
		Act of the Governor of Madras in Council	
1920	X	The Co operative Societies (Amendment) Act, 1920	The whole

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